201<sup>1</sup> Jul-14 PM 04:33 U.S. DISTRICT COURT N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA NORTHEASTERN DIVISION JAMON T. BRIM, Plaintiff, 10-CV-00369-IPJ February 24, 2011 Florence, Alabama VS. 9:15 a.m. MIDLAND CREDIT MANAGEMENT, \* INC., Defendant. \* TRANSCRIPT OF JURY TRIAL 10 BEFORE THE HONORABLE INGE P. JOHNSON UNITED STATES DISTRICT JUDGE 11 VOLUME III 12 13 FOR THE PLAINTIFF: 14 MR. LEONARD A. BENNETT, ESQ. 15 CONSUMER LITIGATION ASSOCIATES 12515 Warwick Blvd 16 Suite 100 Newport News, VA 23606 757-930-3660 17 18 MS. PENNY HAYS CAULEY, ESQ. HAYS CAULEY P O Box 509 19 Darlington, SC 29540 20 843-393-5200 MR. RONALD C. SYKSTUS, ESQ. 21 BOND, BOTES, SYKSTUS & LARSEN 22 415 Church Street Suite 100 Huntsville, AL 35801 23 256-539-9899 24 25

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# PROCEEDINGS (In open court. Jury not present.) MR. LANGLEY: We'd like to move to admit 21. 09:15:52 MR. BENNETT: No objection. THE COURT: It's admitted. MR. LANGLEY: Your Honor, we also put binders of the defendant's exhibits on the 09:16:04 10 jurors chairs. 11 THE COURT: Okay. Let the record show this is February 24th, 2011. The parties 12 13 and lawyers are here. And I don't think you got -- I didn't know we were going to put this on 14 the record. But we are. The defense attorney 09:16:12 15 said that they had discovered that Defendant's 16 17 Exhibit 21, which was a redacted copy of the purchase contract, was actually put in 18 unredacted. So the issue of whether it should be 19 09:16:26 20 redacted or unredacted is moot, and it's in the defendant's binder, and it is admitted. And 21 22 that's okay with the plaintiff, right? 23 MR. BENNETT: It is, Judge. 24 THE COURT: Okay. Now, I have 09:16:36 25 something to take up with y'all, which I have

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never had happen. And I have been a judge since
         January of 1979. So I want y'all to look at what
         one of the jurors gave Tammi. And just read it
         and let's discuss what to do with it. Because I
         need some suggestions.
09:17:00
                         MS. CAULEY: Should we read it out
         loud?
                         THE COURT: No. Just read it to
         yourself. It is from Mr. Bess, who is the
09:17:14 10
         heavyset gentleman, sitting on the front row.
     11
                         MR. LANGLEY: Interesting.
                         MR. BENNETT: Good questions.
     12
     13
                         MR. LANGLEY: Yeah. They are.
                         MS. CAULEY: I read a lot slower
     14
09:17:52 15
         than you guys.
     16
                         THE COURT: Did you see it?
     17
                         MR. BENNETT: Yes, Judge.
                         THE COURT: Do we want to make
     18
         this Court's Exhibit Number 1 for the purpose of
     19
09:18:14 20
         this hearing? Do we need to mark it?
                         MR. BENNETT: I think we should.
     21
     22
                         MR. LANGLEY: I think we probably
     23
         should.
     24
                         THE COURT: Mark it as Court's
09:18:22 25
        Exhibit A. Okay. And that's from Mr. Bess,
```

Tammi? COURTROOM DEPUTY: Yes, ma'am. MR. BENNETT: Your Honor, they're good questions. I think these are residual questions from when I examined the defendant's 09:18:32 witness. The problem is that he can't -- he's not on the stand right now. So the Court's position, I believe, should be that these are questions that appear intended for the defendant and if the defendant witness is 09:18:48 10 11 re-presented or if a defendant witness is 12 re-presented, that would be the appropriate time 13 if the witness believes those questions 14 appropriate for that witness. Unless you would like me to answer them, which I'm -- I suspect --09:19:06 15 THE COURT: No. They had a 16 17 question about whether they could ask you questions. Not you, but could we ask them 18 questions, too, and get answers from them. And I 19 09:19:20 20 said no. 21 MR. BENNETT: If they would 22 stipulate, we would be happy to. 23 THE COURT: What do you say, Eric? MR. LANGLEY: Well, I think at 24 09:19:26 25 this point, it might be premature to decide what

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to do about this. Those are fair questions. Because what they've done is tried to put the computer system on trial. I guess to preserve the record, we should move to excuss Mr. Bess. Because he's already demonstrated some outside 09:19:46 knowledge about algorithms that may unfairly prejudice the remainder of the jury. THE COURT: Mr. Bess, I think he was a math person already. So we already knew 09:19:58 10 that information. 11 MS. CAULEY: He was an engineer. THE COURT: Yeah. He's with 12 13 Navistar. So y'all knew what he did for a living 14 when you didn't strike him. And I'm not going to excuse him at this point. Okay? 09:20:08 15 16 MR. LANGLEY: You're overruling 17 our objection? 18 THE COURT: Yeah. Your request to excuse him, I am. 19 09:20:16 20 Do you have any problems with me saying that at this time, those answers cannot be 21 22 furnished? 23 MR. LANGLEY: No. We do not have 24 a problem with that. 09:20:24 25 THE COURT: If I just say that. I

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don't want to say that it's on their -- that it
is their duty to answer them, because it's not.
If they don't want them answered --

MR. BENNETT: Yes, Your Honor.

And that would be fair. But just to lay my cards out, Your Honor has seen, as we served it early this morning and sent to the defendant, we've asked for an adverse inference jury instruction.

We will ask the Court at charging conference to instruct the jury that a party that has control over witnesses or documents and fails to produce them that the jury can fairly conclude that those documents and witnesses would be adverse.

I think that protecting the record, making sure that there isn't -- to date, there's nothing that would be fairly appealable in our instance.

And so a conservative take we understand except that it is the defendant's -- the questions are clearly targeted to the defendant. They're asking them --

THE COURT: Well, let me tell you this: I plan to tell the jury when they come back that I have this piece of paper and that they're not allowed to ask questions out of the

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clear blue sky; that they were allowed to ask questions of live witnesses immediately after the witness testifies. And at this time, I have no intentions of attempting to get the information that he seeks. That's what I'm going to -- because he doesn't have -- I didn't tell them they could do this. And it's inappropriate at this time to go any further with that. That's my --

MR. BENNETT: Yes, Judge.

THE COURT: And I -- you know, it's not their fault. It's not the defendant's fault that their key witness is on maternity leave.

MR. BENNETT: Yeah. True, Judge. That key witness would have --

THE COURT: That happened I would say approximately ten months ago. 11 months ago.

MR. BENNETT: That witness is just someone -- that is a litigation liaison. I mean, the key witness isn't part of the trial.

THE COURT: You say they failed to produce the witness. I mean, she is there. Her testimony has been taken. That the questions were not asked of her is not to be blamed on the

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defendant.

MR. BENNETT: No. Judge, yes,

Your Honor.

THE COURT: Okay. All right.

09:22:40 5 Okay.

09:22:52 10

09:23:06 15

09:23:16 20

09:23:32 25

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MR. BENNETT: There is one other housekeeping matter, but it is not urgent. And I would just put it on the Court's agenda whenever the Court wants to consider it. The defendant will be calling Dell by video deposition, and that's okay.

And the -- given how long the deposition went yesterday with Transunion, for example, we're not going to go through the entire deposition; we're going to read it. Just the excerpts that have been disclosed. It should be half an hour instead of three hours.

with Dell, the defendant wants to play the entire video, and that's fine. We would like to not disrupt that process and stop it. And there are -- while there are several objections, there were three that were made by Ms. Cauley that we believe are of significant merit. And we believe that it would be most effective or efficient to address them with the Court given that we have

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the transcripts; we already know the questions. We are not suggesting -- it is okay -- we have engineers and jurors that are giving a fair We don't mind if they hear the hearing. question, hear the objection. But rather than 09:23:44 argue it any further in front of Your Honor, pausing it, if Your Honor has already ruled, then --THE COURT: You want me to rule on 09:23:54 10 those three objections before the video? 11 MR. BENNETT: Yes, Your Honor. 12 And we can be quiet. THE COURT: I'll do that. Are you 13 14 going to call Dell as the first witness? MR. LANGLEY: Yes. 09:24:06 15 THE COURT: Well, just take a 16 17 break before. I mean, we have to take a break anyway because we have motions after the 18 plaintiff rests. So that will be fine. Okay. 19 09:24:14 20 Let me see that again before I tell the 21 And you can go get the jury. jury. 22 MR. BENNETT: Judge, we have two 23 exhibits that we've made the copies of now. 24 the jury is here, can we give them to the jury? THE COURT: Yes. That will be 09:24:40 25

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fine. (Discussion off the record.) (In open court. Jury present.) THE COURT: Have a seat everyone. MR. BENNETT: Your Honor, may we 09:28:52 provide the copies we committed to? THE COURT: Yes. MR. BENNETT: These are exhibits 42 and 82. They're not in use for the video 09:29:20 10 deposition this morning. 11 THE COURT: Let the record show this is February the 24th, 2011. And this is the 12 third day of the trial, CV-10-369, Jamon Brim 13 versus Midland Credit Management, Inc. Let the 14 record show that the parties are here. 09:29:36 15 The lawyers are here. The jury is here. Good 16 17 morning to everybody. And I understand -- and I'm just going to 18 put this on the record to make sure that you all 19 09:29:50 20 hear what I have to say. I understand that one or two or some of the jurors asked Tammi if they 21 22 could ask the lawyers questions. And you cannot. 23 Secondly, I understand -- I got a question 24 or a list of questions from Mr. Bess; is that 09:30:12 25 correct?

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JUROR 2: Not me. THE COURT: Well, who was it from? Oh. From you. Hang on just a second. From Mr. Hines, right? Okay. Let me just say this. I have shared those questions with the lawyers. 09:30:44 But they really don't have a say-so in what I'm saying to you right now. I have not allowed y'all to ask questions -- just questions. I have allowed y'all to ask questions of a witness while 09:30:58 10 the witness is on the witness stand and under 11 oath. And that is the only thing I have allowed y'all to do. 12 So at this point, I'm not going to go any 13 further with those questions. Okay? 14 JUROR 19: This was because of the 09:31:12 15 16 deposition. 17 THE COURT: But just I'm not going to go any further with those questions. 18 JUROR 19: Okav. 19 THE COURT: All right. Thank you. 09:31:18 20 And we were on the deposition of Equifax 21 22 representative. And we were on the defendant's 23 questions. And we are on Page 66, right? 24 MS. CAULEY: Yes, Your Honor. Page 66. 09:31:34 25

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THE COURT: All right. And you may proceed. (Video played.) MR. LANGLEY: Your Honor, can we pause it and get the volume straightened out? 09:32:48 THE COURT: Yeah. COURTROOM DEPUTY: Go ahead. (Video played.) MR. LANGLEY: In view of this, can 09:34:32 10 I put my colleague, Jason, on the stand to read 11 the rest of this? THE COURT: Sure. That will be 12 13 fine. When Mr. Tompkins is reading the answers, 14 you should consider that as if the person --09:34:58 15 obviously the same way the person is testifying 16 on deposition. As if she were here in person, 17 testifying under oath. 18 MR. LANGLEY: Your Honor, to make sure the context is straight, may I start on the 19 09:35:16 20 preceding page, Line 19? THE COURT: Yeah. 21 22 CROSS-EXAMINATION 23 BY MR. LANGLEY: 24 On the credit report within Exhibit 1, 09:35:22 25 which is Plaintiff's 37, how many negative

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accounts are there? Give me just a second. I can't see it on the copy. I can't see it on the copy. Yes. This is the one you gave me. I can help you out by pointing you to, I 09:35:36 believe, it's the fourth page of Exhibit 1. Plaintiff's 37. Thank you. Negative accounts I believe that's the three. 09:35:48 10 From this report, can you tell whether or 11 not Midland was one of those negative accounts? Give me just a second. I'm going through 12 the report. Yes. Midland is on the file. And 13 I'm looking at Bates number --And that was one of --09:36:02 15 I was looking at Bates Label 48 to show 16 17 the Midland account. And that's one of the three listed 18 negative accounts? 19 09:36:12 20 A Yes. 21 What are the other two listed negative 22 accounts? 23 You're going to have to give me a second 24 to go back through this report. 09:36:20 25 Q Take as much time as you need.

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1	A There is a collection account for the U.S.
2	Department of Education. And there is another
3	for City Cards. No. I'm sorry. Not City Cards.
4	I actually can't tell what the name of the
09:36:34 5	company is. States charge-off. But you're
6	right. But there are three.
7	Q And you can't say whether or to what
8	extent the Midland account factored into the
9	overall credit rating, can you?
09:36:46 10	A No, I can't.
11	Q Ms. Banks, I believe that's all I have at
12	this time. Thank you.
13	A Thank you.
14	MS. CAULEY: We do have some
09:36:52 15	redirect.
16	THE COURT: Okay.
17	MR. BENNETT: If opposing counsel
18	would provide me the courtesy, may I borrow your
19	copy, counsel?
09:37:02 20	THE COURT: Yeah. We actually
21	have a copy of it, too, if you need it.
22	MR. BENNETT: Thank you.
23	THE COURT: Just the same thing
24	I've already said. We're going to continue with
09:37:24 25	this witness. And you're going to be her.

MR. BENNETT: I will do my best, Judge. THE COURT: Okay. REDIRECT EXAMINATION BY MS. CAULEY: 09:37:28 Ms. Banks, I have a few more questions. With respect to Plaintiff's Exhibit 1 that Mr. Langley was just referring to, Midland Credit Management was reporting as a collection account 09:37:40 10 on that credit report that was contained in 11 Plaintiff's Exhibit 1; is that right? That's correct. 12 13 And certainly a collection account does have a negative impact on an individual's credit 14 and credit score? 09:37:50 15 16 It can. 17 Mr. Langley asked you if it was possible 18 that a credit report that was provided to a potential creditor of Mr. Brim's would not have 19 09:38:00 20 included the Midland Credit Management account. It would also be possible that a credit 21 22 report provided would have contained the Midland 23 Credit Management report account; is that right? That's correct. 24 Α 09:38:12 25 0 When Equifax receives documentation from a

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consumer, does Equifax ever send those actual documents out to a furnisher of information? We do not. We utilize the FCRA relevant information field to notify the creditor specific information that the consumer has noted as part 09:38:30 of their dispute. And so Equifax's policy of not sending out the actual documents received from consumer does not indicate whether Equifax used the document -views the document as sufficient or not on an 09:38:44 10 11 account; it's just that Equifax never actually sends out the documents? 12 That would be --13 Would that be true? 14 That would be correct. And let me just 09:38:54 15 16 state for the record Equifax does not gather an opinion one way or the other. 17 On documentation received from a consumer? 18 Well, on whether the information is 19 09:39:04 20 accurate or not. As previously testified, if we 21 are able to accept the documents and we have 22 received from the -- excuse me. From the 23 consumer disclosure, we will update the file 24 based on that. If they are not documents that we 09:39:20 25 can use, we will contact the creditor.

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When Equifax contacted Midland Credit
         Management in August of 2008, it was done
         electronically by ACDV; is that right?
                 That's correct.
                 It's not actually a form that's sent
09:39:32
         through the mail that can be lost?
                 No. It's not.
         Α
                 And I know we've been looking at
         Plaintiff's Exhibit 1. If you will look at Bates
         48 of Plaintiff's Exhibit 1.
09:39:42 10
     11
                 Okay. I have it available.
                 That's 37. As of the date on the credit
     12
     13
         report, which I believe you testified earlier was
         July 13th of 2008 -- at that time, was the
     14
09:40:00 15
         Midland account reporting with a past due
         balance?
     16
     17
                 Yes, it was.
                 16 -- okay. And that balance that it was
     18
         reporting as past due was $1,617?
     19
09:40:12 20
         Α
                 That's correct.
                 And then if you go up to Plaintiff's
     21
     22
         Exhibit 4, we see that the current balance being
     23
         reported at that time the ACDV was sent by
     24
         Equifax was actually $1,692?
09:40:24 25
         A That's correct.
```

```
Is that right?
         Q
         Α
                 Yes. That's correct.
                 And for the record, that's Plaintiff's
         Exhibit 40 in the notebook. So would it be true
         that when we can -- we can gather that from the
09:40:36
         July of 2008 credit report where Midland's
         account was reporting with a past due balance of
         $1,681 and the date that Equifax sent out this
         ACDV where the balance was $1,692 -- that at some
09:40:56 10
         point time in between July of 2008 and March of
     11
         2009, Midland re-reported that account with an
     12
         unpaid balance?
     13
                 That's correct.
                 Is it true that Equifax relies on its data
     14
09:41:10 15
         furnishers to provide accurate information
     16
         regarding an account?
     17
                 Yes, we do.
                 And in this instance, Equifax relied on
     18
         Midland Credit Management to provide accurate
     19
09:41:22 20
         information regarding Mr. Brim's account?
                 Yes.
     21
         Α
     22
                 And did Equifax also rely on Midland
     23
         Credit Management to investigate Mr. Brim's
     24
         dispute regarding the balance of the account?
09:41:32 25
         A Yes, we did.
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And on Exhibit 6, which is Exhibit 42 in
          Q
          the notebook --
          Α
                 Okay.
                 On the last two pages, we have the ACDV
          that was provided on February 25th of 2010.
09:41:48
                 That's correct.
          Α
                 And at that time, Midland was continuing
          to report a balance due for Mr. Brim?
                 That's also correct.
          Α
09:42:08 10
                 And that balance was $1,774?
          Q
     11
          Α
                 Yes.
                 That's all I have.
     12
          Q
     13
          Α
                 Okay. Thank you.
                          THE COURT: Anything else from the
     14
09:42:16 15
          defendant?
                          MR. LANGLEY: No further
     16
     17
          questions.
                          THE COURT: Okay. Thank you.
     18
     19
                           (Witness steps down.)
09:42:26 20
                          THE COURT: Do y'all have copies
     21
          for me of those two exhibits you put in the
     22
          jurors' exhibit books? Have you gotten them,
     23
          Tammi?
     24
                          COURTROOM DEPUTY: No, ma'am.
09:42:44 25
                           (Discussion off the record.)
                         CHERYL K. POWELL, CCR, RPR, FCRR
                         Federal Official Court Reporter
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THE COURT: Thank you. All right.

Call your next witness, please.

MR. BENNETT: Your Honor, having

endured that intimidation already as the witness,

09:43:06

endured that intimidation already as the witness I would like to reverse roles. I would like to ask Mr. Sykstus to take the stand on behalf of Transunion.

THE COURT: All right.

09:43:18 10

11

12

13

17

19

23

MR. BENNETT: Your Honor, this is a deposition I had promised to play by video, but we cut about half or more of it out. And the pace would be more expeditious if we read it, and that's the reason.

14

THE COURT: That's fine. Actually I think we can hear a little bit better, too.

09:43:30 15

MR. BENNETT: We have highlighted copies we will, I'm sure with agreement, leave with the court reporter, as well.

18

THE COURT: That's great. Thank you. And you should consider that as if the Transunion representative were here in person, testifying under oath.

21

09:43:46 20

MR. BENNETT: Your Honor, it was a videotaped deposition taken telephonically of Mr. Newnom, held on Tuesday, January 25th, 2011.

24

09:43:58 25

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THE COURT: Okay.
                          MR. BENNETT: And I will play the
         role of Ms. Cauley, Judge.
                          THE COURT: Y'all really do switch
         roles today.
09:44:18
                          DIRECT EXAMINATION
         BY MR. BENNETT:
                 Mr. Newnom, will you please state your
         full name for the record?
09:44:24 10
                 Steven L. Newnom.
     11
                 And if you're here -- and you're here
     12
         pursuant to a trial subpoena today to give a
         deposition?
     13
                 Yes, I am.
     14
         Α
09:44:30 15
                 By whom are you employed?
     16
                 Transunion.
     17
                 And what is your position at Transunion?
         0
                 I am a team leader.
     18
         Α
     19
                 What do your duties include as a team
09:44:42 20
         leader?
     21
                 To oversee the daily functions of the
     22
         department, help train, assist consumers, and do
     23
         daily activity within -- with the associates.
     24
         Q
                 What department are you a team leader for?
09:44:54 25
         Α
                 The priority processing department.
```

What is priority processing? Q We handle files for attorneys, government agencies, such as better business bureaus, possibly escalating complaints from our corporate office, any third-party requests. 09:45:08 MR. BENNETT: Your Honor, we have determined the exhibits. THE COURT: Okay. MR. BENNETT: And I will -- the 09:45:18 10 pattern that I will use is I will identify the --11 just for accuracy the exhibit here, tell the 12 jury, for example, in this instance, Exhibit 1 is 13 going to be Exhibit 43. 14 THE COURT: Okay. 09:45:30 15 MR. BENNETT: And then I will 16 substitute in -- counsel has the transcript. will not replay that explanation every time it's 17 Exhibit 1. I will just substitute 43. Most of 18 these are in sequence, starting at 43. 19 09:45:46 20 THE COURT: That's fine. 21 BY MR. BENNETT: 22 And have you had the opportunity to review the document that's been marked as Exhibit 1 23 24 through 17 prior to the deposition? And then 09:46:00 25 there will be an Exhibit 19, as well, that was

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produced by Transunion this morning.
                 Yes, I have.
                 And are these documents all documents that
         were created by, maintained by Transunion?
                 Most of them, yes.
09:46:12
                 Those that weren't created by Transunion,
         those were documents received from Mr. Brim in
         response to disputes he filed with Transunion,
         and those documents were maintained as copies
09:46:22 10
         that were received?
     11
                 Correct.
     12
                 Can you tell us, please, what is
     1.3
         Transunion?
     14
                 We are a credit bureau.
                 And as a credit bureau, does Transunion
09:46:28 15
         receive information and compile information from
     16
     17
         various data furnishers on consumers?
                Yes, we do.
     18
                 And then, in turn, does Transunion also
     19
09:46:44 20
         provide consumers with copies of their credit
     21
         report for them to review and correct if
     22
         necessary?
     23
                 Yes. We do provide credit reports.
     24
                 And does Transunion also provide credit
09:46:54 25
         reports to potential credit grantors on an
```

```
individual consumer?
                 Yes, we do.
         Α
                 Are you familiar with Midland Credit
         Management?
         Α
                 I have seen them before within the credit.
09:47:02
                 Are they a data furnisher for Transunion?
         Α
                 They provide us information, yes.
                 And when a letter is received from a
         consumer, what is Transunion policy for handling
09:47:16 10
         a letter from a consumer?
     11
                 It is to review the letter and basically
     12
         do what the consumer requests.
     13
                 If that letter contains a dispute,
         regarding a specific account, how would
     14
09:47:28 15
         Transunion handle that dispute?
                 We would pull up the consumer's credit
     16
     17
         report. We would review the actual information,
         what they were disputing. And we'd initiate an
     18
         investigation in -- where we would go back to the
     19
09:47:40 20
         creditor to verify whatever the consumer was --
         had a dispute with.
     21
     22
                 As part of that investigation, how do you
     23
         actually go back to the original creditor?
     24
                 Most of the time, it's done
09:47:52 25
         electronically.
```

 ${\it CHERYL~K.~POWELL},~{\it CCR},~{\it RPR},~{\it FCRR}$ 

```
And is that done pursuant to an ACDV?
         Q
                 That is correct.
         Α
                 And will you tell the jury what an ACDV
         Q
         is?
         Α
                 That is an automated consumer dispute
09:48:00
         verification form.
                 And those are all -- all sent
         electronically to the data furnisher?
         Α
                 Yes, they are.
09:48:10 10
                 Does Transunion also maintain the original
         letter from the consumer disclosure?
     11
                Yes, we do.
     12
         Α
                 And how does Transunion do that?
     13
                 We scan that into our on-base database.
     14
         Α
09:48:22 15
                 Mr. Newnom, can you identify what Page 1
         and 2 are of Plaintiff's Exhibit 43?
     16
     17
                 This is an internal copy of our history of
         our communication with the consumer. It's
     18
         actually -- the consumer contact is by telephone.
     19
09:48:40 20
         And we pull the copy of the consumer's credit
         report for review.
     21
     22
                 And Plaintiff's Exhibit 43 indicates that
     23
         Mr. Brim telephoned Transunion on July 29th,
         2008?
     24
09:48:54 25
         A Correct. Requesting a copy of his credit
```

report. And at that time, did Mr. Brim indicate to Transunion that he had been denied credit? No. He did not. He came through the automated telephone system, requesting a copy of 09:49:04 his report. And do you see after it has the date and telephone it says consumer states and next to it says denied credit? Yes. That was selected. 09:49:18 10 11 Okay. So Mr. Brim indicated that he 12 called in to the automated system that he had been denied credit? 13 Correct. 14 Α And as a result of Mr. Brim's indication 09:49:28 15 that he had been denied credit, did Transunion 16 17 provide Mr. Brim with a free copy of his credit disclosure? 18 Yes, we did. 19 09:49:38 20 If you'll turn to Page 3 of Plaintiff's Exhibit 43, it's actually on the bottom. Bates 21 22 Number TU69. And following. Is that a copy of 23 the credit disclosure, dated July 29, 2008, that 24 was provided by Transunion to Mr. Brim? 09:50:00 25 Yes. It is. A

CHERYL K. POWELL, CCR, RPR, FCRR

```
If you will turn to Bates Page 72 in that
         document.
                 Yes.
                 There is an account identified as Midland
         Credit Management reporting on Page 72?
09:50:14
                 Yes. There is.
                 Is that account reporting under the
         adverse account section of Mr. Brim's consumer
         disclosure?
09:50:28 10
                 Yes, it is.
     11
                 And that Midland Credit Management account
     12
         is reporting as a collection account; is that
     13
         correct?
                 That is correct.
     14
         Α
09:50:36 15
                 And could you tell us the balance that was
         reported on July 29, 2008?
     16
     17
                 $1,617.
         Α
                 And the date place for collection was
     18
         October of 2007?
     19
09:50:48 20
         Α
                 That is correct.
                 When Mr. Brim telephoned Transunion on
     21
     22
         July 29, 2008, and indicated to the automated
     23
         system that he had been denied credit, did
         Transunion undertake any investigation to
     24
09:51:06 25
         determine whether Mr. Brim had, in fact, been
```

 ${\it CHERYL~K.~POWELL},~{\it CCR},~{\it RPR},~{\it FCRR}$ 

denied credit or whether his credit report had been viewed by a potential grantor? We would review if there was a recent inquiry and then provide him with an updated report. But that is all we would do. 09:51:20 Okay. And if we look at the inquiry on this July 29, 2008 disclosure, there is an inquiry from First Metropolitan, MOR via Credit Plus from July 28, 2008; is that right? 09:51:36 10 Correct. 11 And can you tell the jury, please, what a regular inquiry is for a credit transaction? 12 They view the credit information on the 13 consumer's credit report. The account 14 09:51:50 15 information and possibly scores, as well. Would they have had access to view all 16 17 account information being reported regarding Mr. Brim if they were under the regular inquiry 18 19 section? 09:52:02 20 Α Yes. They would. Okay. Do you see that Midland Credit 21 22 Management is showing as an account review inquiry in May of 2008? 23 Yes. I do. 24 Α 09:52:18 25 MR. BENNETT: And Your Honor, I

CHERYL K. POWELL, CCR, RPR, FCRR

```
believe that's Bates Number 76.
                         THE COURT: Okay.
                         MR. BENNETT: And Judge, now we'll
         be turning to Exhibit 2 in the transcript, which
         is 44 in the plaintiff's book.
09:52:44
                         THE COURT: Okav.
         BY MR. BENNETT:
                 If you look at Plaintiff's Exhibit 44,
         Page 78 and 79, would that, again, be Transunion
09:52:56 10
         computer history of contact by Mr. Brim?
     11
                 Correct.
                 And in Plaintiff's Exhibit 44, how did
     12
         Mr. Brim contact Transunion on that occasion?
     13
                 Through the internet.
     14
         Α
09:53:08 15
                 And on what day did he contact Transunion?
         0
                 Tuesday, July 29th, 2008.
     16
     17
                 And did he request a copy of his credit
         report via the internet, as well?
     18
                 Yes, he did.
     19
         Α
09:53:20 20
                 And that was at that time through the
         internet he requested his fact act free
     21
     22
         disclosure?
     23
                 That is correct.
     24
                 Did Transunion also provide him another
09:53:30 25
         copy pursuant to that request through the
```

```
internet of his consumer disclosure dated July
         29, 2008?
                He did view another report on line.
                And would that have -- that report have
         been as set forth in Plaintiff's Exhibit 44 as
09:53:44
         that exact same report as was set forth in
         Plaintiff's Exhibit 44?
                Yes.
         Α
                 I'm sorry. The same report as in Exhibit
09:53:58 10
         43.
              Yes. Great. Can you please identify what
     11
         Plaintiff's Exhibit 3, which is 45 -- what
         Plaintiff's Exhibit 45 is?
     12
     13
                 This is a dispute request from the
         consumer, Mr. Brim -- or I'm sorry. Jamon Brim
     14
         on 8-4, 2008.
09:54:16 15
     16
                 Was this actually received in person as an
         actual document by Transunion as opposed to over
     17
         the internet?
     18
                 We received it by mail, yes.
     19
09:54:30 20
         Q
                 At that time, Mr. Brim provided his social
         security number, date of birth, and driver's
     21
     22
         license number for verification of his identity?
     23
                 Yes, he did.
         Α
     24
         Q
                And which account was Mr. Brim disputing?
09:54:42 25
         Α
                On the first page, Bates 89, Midland
```

Credit Management. And what did he say was the reason he was disputing the account? That he had paid this account in full and that he paid it before it went to collection or 09:54:52 before it was charged off. Did Mr. Brim also dispute two other accounts as not being his accounts? Yes. He did. On Bates 90, Professional Α 09:55:06 10 Finance and Texas, I believe, quaranteed student 11 loan. Then I believe the last item that Mr. Brim 12 13 indicated is incorrect is he provided additional 14 employment information at Target Distribution Center; is that right? 09:55:22 15 That is correct. 16 17 Along with his request for investigation that Mr. Brim filled out, did he also provide 18 Transunion a copy of his driver's license and 19 09:55:34 20 social security card? Yes, he did. 21 22 And a copy also of the consumer disclosure 23 that he had received from July 29th, 2008, where in he circled the Midland Credit Management 24 09:55:44 25 account?

CHERYL K. POWELL, CCR, RPR, FCRR

```
Yes, he did.
         Α
                 After Transunion received Plaintiff's
         Exhibit 45, what action did Transunion take?
                 We pull a copy of the consumer's credit
         report and initiate an investigation into the
09:55:58
         Midland Credit Management account.
                Can you identify what Plaintiff's Exhibit
         4 is, which is 46? What Plaintiff's Exhibit 46
         is?
09:56:10 10
                 This is another correspondence from the
     11
         consumer, disputing information on his credit
         report that we received on July -- I'm sorry.
     12
         August 4, 2008.
     13
                 To your knowledge, was Plaintiff's Exhibit
     14
         46 received separately from Plaintiff's Exhibit
09:56:24 15
         45?
     16
     17
                I believe it was.
                And in this letter, Mr. Brim, again,
     18
         disputed the Midland Credit Management account as
     19
09:56:34 20
         well as the Texas guaranteed student loan and the
         Professional Finance account?
     21
     22
                 Yes, he did.
     23
                 Did Mr. Brim provide any documentation
     24
         with his letter to Transunion?
09:56:48 25
         A He provided a Redstone Federal Credit
```

Union printout.

09:57:00

09:57:16 10

09:57:24 15

09:57:40 20

11

12

13

14

16

17

18

19

21

22

23

24

09:57:52 25

Q And did Transunion also initiate an investigation after receipt of Plaintiff's Exhibit 46?

A I believe it was all done at the same time. The -- the other document was received, as well.

MR. BENNETT: Judge, we have pulled out 47 and 48 for expediency, and the next exhibit is 49, which is referred to as Exhibit 7.

THE COURT: Okay.

# BY MR. BENNETT:

Q Can you please identify Plaintiff's Exhibit 49?

A This is an ACDV response from Midland Credit, reporting the consumer's information.

Q Does Transunion maintain a copy of the ACDV when it is sent out to a data furnisher or only once it's received back?

A I do not know if we keep a copy of the original sent out, but it just has the same information as the one received back except for the response from the creditor.

Q And can you tell me, please, what date Plaintiff's Exhibit 49 was sent out to Midland?

#### CHERYL K. POWELL, CCR, RPR, FCRR

```
That would be eight -- I'm sorry. What
         date was that? It would have been 8-4, 2008.
                 And this would have been ACDV sent in
         response to Mr. Brim's disputes that were
         received by Transunion on August 4, 2008?
09:58:08
                Correct.
                 In Plaintiff's Exhibit 49 is an ACDV that
         was sent to Midland on August 4, 2008; is that
         correct? Is that right?
09:58:22 10
                 Yes.
                 And it was sent to Midland via electronic
     11
         transmittal?
     12
     13
         Α
                Yes.
                 And the ACDV was sent by Transunion to
     14
09:58:30 15
         Midland in response to Plaintiff's Exhibit 45 and
     16
         46, which were the disputes received from
     17
         Mr. Brim?
     18
         Α
                Yes.
                 And what information did Transunion
     19
09:58:44 20
         provide to Midland Credit Management regarding
         Mr. Brim's dispute?
     21
     22
                 We provided what the consumer stated
     23
         within his letters; that he claims he paid the
     24
         original creditor before collection status or
09:58:56 25
         paid before charge-off and to verify the account
```

status, pay rating, current balance, amount past due, and payment history. And also we left a comment stating that the consumer stated he paid it on 11-8, 2004. And what was Midland Credit Management's 09:59:12 response to this ACDV? That they verified the information as being accurate and they also requested to have the remark changed from the collection status to 09:59:24 10 account in dispute. 11 And as a result of Midland Credit Management's response to the ACDV by Transunion, 12 13 the Midland Credit Management account remained on 14 Mr. Brim's credit report? Correct. 09:59:34 15 Α And in response to the ACDV, Midland 16 Credit Management indicated that the account was 17 being reported correctly? 18 Correct. 19 Α 09:59:44 20 Now, can you please identify Plaintiff's Exhibit 50, referred to as Eight in your 21 22 transcript? 23 This is just a computer printout of the 24 information regarding the dispute with Midland Credit that the consumer stated. 10:00:00 25

CHERYL K. POWELL, CCR, RPR, FCRR

Does this show action taken by Transunion Q in response to Midland Credit Management's return of the ACDV? Yes. The first page prints out what was disputed, what was returned, and the second page 10:00:14 is how the account looked before the investigation. And the change section states how it was modified after the investigation. And if you look at Page 112, which is the second page of Exhibit 50, we see that the loan 10:00:34 10 11 type went from factoring company account to collection agency/attorney. 12 13 Α Correct. Is that right? 14 Yes, it is. 10:00:46 15 Α And that the account information disputed 16 17 by consumer remark code was added? Yes, it was. 18 Α Okay. And then the date verified was 19 10:00:56 20 updated from July of 2008 to August, 2008? 21 Correct. Α 22 And it also is showing now as being 23 verified as the account being verified? That verification states that we had 24 Α communication with the creditor. 10:01:10 25

CHERYL K. POWELL, CCR, RPR, FCRR

```
And that Midland Credit Management had
         verified the accuracy of the account that they
         were reporting?
                 Based on the ACDV response, yes.
                 Can you tell me, please, what Exhibit 51
10:01:24
               51 is referred to as Nine in the transcript.
         is?
         Can you tell me what Exhibit 51 is?
                 This is an updated version of the
         consumer's credit report, based upon the
10:01:38 10
         investigation.
     11
                 And after Transunion initiated its
     12
         investigation and received an ACDV response from
     13
         the data furnisher, does Transunion always send
     14
         out an updated consumer disclosure to the
         consumer?
10:01:54 15
                 Yes.
     16
     17
                 And in that consumer disclosure,
         Plaintiff's Exhibit 51, the employment
     18
         information has been updated to show Target
     19
10:02:04 20
         Distribution Center; is that correct?
                 Yes.
     21
         Α
     22
                 And it also continues to show -- it also
     23
         continues to contain the Midland Credit
     24
         Management account?
10:02:14 25
         A Yes.
```

```
Can you identify Plaintiff's Exhibit 10,
         which is 52?
                Yes. This is another written dispute
         communication with the consumer with Transunion.
                 What date was it received by Transunion?
10:02:32
                 March 16, 2009.
         Α
                 What action did Transunion take upon
         receipt of Mr. Brim's letter?
         Α
                 We would normally initiate an
         investigation into whatever information he was
10:02:44 10
     11
         disputing within this document.
                 And along with Mr. Brim's letter, which is
     12
         dated March 10th, 2009, he also included a copy
     13
         of the previous letter from July 29th, 2008; is
     14
         that right?
10:03:00 15
     16
                 On Bates 124, yes.
     17
                 And a copy of the bank statement from
         Redstone Federal Credit Union, which is Bates
     18
         125?
     19
10:03:10 20
         Α
                Yes.
                 And a copy of the July 29, 2008, consumer
     21
     22
         disclosure that he had received from Transunion?
     23
                 That is correct.
     24
                 Can you identify, please, what Exhibit 11
10:03:26 25
        is, which is 53?
```

```
This is a copy of the consumer's report we
         pulled to actually view to initiate the
         investigation into his credit report.
                 Was Plaintiff's Exhibit 53 actually
         provided to Mr. Brim, or was it just a report
10:03:38
         that Transunion viewed?
                 It's just a report Transunion viewed.
                 And on this March 18th, 2009, report, the
         Midland Credit Management account is still being
         reported on Mr. Brim's credit report?
10:03:52 10
     11
                Yes, it is.
                 After Transunion pulled this credit report
     12
     13
         on March 18th, 2009, did Transunion also send a
         new ACDV to Midland Credit Management?
     14
                I believe we did.
10:04:08 15
         Α
                 And if we look in this exhibit at the
     16
         inquiry section, we can see that on January 15th,
     17
         2009, 224 RBC USA obtained a copy of Mr. Brim's
     18
         credit report.
     19
10:04:34 20
                         MR. BENNETT: And I believe, Your
     21
         Honor, that's on Page TU142.
     22
                Yes. They did.
     23
         BY MR. BENNETT:
                And on December 10th, 2008, Platinum
     24
10:04:48 25
         Mortgage via Factual Data also obtained a copy of
```

```
Mr. Brim's credit report?
                 Yes, they did.
         Α
                 And on September 19th, 2008, First
         Metropolitan Mortgage via Credit Plus and also
         Hometown Lenders via Landsafe Credit both
10:05:04
         obtained a copy of Mr. Brim's credit report?
                 That is correct.
                 And when we looked at the August, 2008,
         consumer disclosure, the Midland Credit
         Management account remained on Mr. Brim's credit
10:05:16 10
     11
         report and credit disclosure; is that right?
                 That is correct.
     12
                 And there's no documentation that the
     13
     14
         Midland account was removed at any time between
10:05:26 15
         August, 2008, and this report dated March 18th,
         2009?
     16
     17
                      I have no documentation stating that.
                 No.
                 And if Transunion had actually removed the
     18
         Midland Credit Management account from Mr. Brim's
     19
10:05:40 20
         credit report, there would be some type of
         documentation, evidencing its removal; is that
     21
     22
         right?
     23
                 Yes.
     24
                 All right. So when we are looking at the
10:05:48 25
         inquiry, these four inquiries that occurred
```

between August, 2008 and March 18th, 2009 -- we know that for each of these four inquiries, the Midland Credit Management account was reporting on Mr. Brim's credit report at the time that these reports were obtained? 10:06:04 Yes. Α Can you please identify Exhibit 12, which is 54? Α This is an ACDV response received back 10:06:20 10 from Midland Credit regarding the consumer's 11 dispute. And, again, when Transunion sent this ACDV 12 13 to Midland Credit Management, they indicated 14 Mr. Brim was disputing the balance, the payment 10:06:32 15 amount, amount past due, current balance, and 16 charge-off amount? 17 Yes. Α And did Transunion also indicate to 18 Midland Credit Management that Mr. Brim indicated 19 10:06:42 20 the account had been paid on November 8th, 2004? Yes. We did. 21 Α 22 And in response, did Midland Credit 23 Management verify the account was reporting as 24 accurate? 10:06:54 25 A Yes. They did. They also updated the

CHERYL K. POWELL, CCR, RPR, FCRR

```
balance to $1,698.
                And was that the only change made, to
         update the balance?
                 No. The date of first delinquency was
         updated to 10 of 2004. And the date verified
10:07:10
         March of -- of 2009.
               And can you identify Plaintiff's Exhibit
         14, which is 56?
         Α
                 The first page is an internal copy of the
         computer system, stating that a -- updated
10:07:28 10
     11
         results were sent to the consumer.
                 Then beginning with Bates Pages 149
     12
     13
         through 151, is that the updated information that
         was provided to Mr. Brim?
     14
10:07:44 15
                Yes. It was.
         Α
                 Can you identify, please, Plaintiff's
     16
     17
         Exhibit 15, which is 57?
                 This is an internal copy of the history
     18
         with the consumer that we pulled a copy of the
     19
10:08:04 20
         credit report based on a telephone conversation.
                 So on February 24, 2010, Mr. Brim called
     21
     22
         in to Transunion?
     23
                 I believe so, yes.
     24
                At that time, was a new consumer
10:08:18 25
        disclosure provided to Mr. Brim?
```

```
Actually, let me see. I believe it was.
         Α
                 If we look at Bates page beginning on
         Bates Page 154, is that a copy of the consumer
         disclosure that was mailed to Mr. Brim?
                 I believe so.
10:08:38
                 If we look at Page 157, is the Midland
         Credit account continuing to be reported on
         Mr. Brim's credit report as of February 24, 2010?
                 Yes, it is.
                 And it's being reported as an adverse
10:09:02 10
     11
         account?
                Yes, it is.
     12
         Α
     13
                If you will, please turn to Bates 159.
                Yes.
     14
         Α
10:09:14 15
                We see two new inquiries that were added.
         We have an American Express inquiry. We have an
     16
     17
         American Express inquiry that was dated May 14,
         2009, and a Wachovia inquiry, dated November 6,
     18
         2009, which are now evidenced on this March 24,
     19
10:09:32 20
         2010 disclosure.
     21
                Yes.
         Α
     22
                 And if you look at that document on Bates
     23
         157, is the Midland Credit Management account
     24
         still reporting as of February 24, 2010?
10:10:02 25
         A Yes, it is.
```

```
Is that account reporting with a balance
         Q
         of 17 -- $1,774?
                 Yes, it is.
                 And the past due balance is also $1,774?
         0
         Α
                 Yes, it is.
10:10:18
                 And also an inquiry from American Express
         from May 14th, 2009?
                 Yes.
         Α
                 Can you tell me, please, or identify what
         Plaintiff's Exhibit 16, which is 58 -- what
10:10:34 10
     11
         Plaintiff's Exhibit 58 is?
                 Yes. I have it.
     12
     13
                 This -- can you please tell me or identify
         what Plaintiff's Exhibit 58 is?
     14
                         MR. BENNETT: Page 54, Line 4.
10:10:56 15
     16
                 This is an ACDV response regarding the
     17
         Midland Credit account.
         BY MR. BENNETT:
     18
                 What date was Plaintiff's Exhibit 58
     19
10:11:06 20
         received back from Transunion?
                 2-26, 2010.
     21
         Α
     22
                 And at that time that Midland responded to
     23
         this ACDV, the only change made was to update the
     24
         balance owing and the past due amount; is that
10:11:22 25
         right?
```

 ${\it CHERYL~K.~POWELL},~{\it CCR},~{\it RPR},~{\it FCRR}$ 

Α Yes. As a result of Transunion receiving the ACDV response from Midland Credit Management, did Midland Credit Management account continue to be reported on Mr. Brim's credit report? 10:11:32 Yes, it did. MR. BENNETT: All right. And Plaintiff's Exhibit 59, for the record, which is 8 17 in the transcript, begins with Bates Page 162 and goes through 170. 10:11:46 10 11 BY MR. BENNETT: And can you identify the first two pages 12 of Exhibit 59? 13 This is the internal copy of the 14 A information regarding the dispute with Midland 10:11:56 15 Credit. 16 17 On Page 2, does that show the changes that 18 were made, that were made by Transunion upon receipt of the ACDV response from Midland Credit 19 10:12:10 20 Management? Yes. 21 Α 22 And on Bates Page 163, it indicates that 23 the account was verified and the balance was updated to \$1,775? 24 10:12:22 25 A Correct.

CHERYL K. POWELL, CCR, RPR, FCRR

```
And that the past due balance was also
         updated to $1,775?
                Correct.
                 Upon updating the account by Transunion,
         did Transunion then send out a new consumer
10:12:32
         disclosure to Mr. Brim?
                Yes. They did receive a full updated
         report.
                 And that report is dated March 1, 2010?
10:12:44 10
                 Yes.
     11
                 And on this March 1, 2010 report, Midland
     12
         Credit Management continues to be reported as an
     13
         adverse account; is that right?
     14
         Α
                 Yes, it is.
10:12:54 15
                 And the date verified is now showing as
         February, 2010?
     16
     17
                 Yes.
         Α
                When we first looked at Plaintiff's
     18
         Exhibit 43, it contained a consumer disclosure
     19
10:13:08 20
         for Mr. Brim, dated July 29, 2008. Do you recall
     21
         that?
     22
                 Yes.
         Α
     23
                 From July -- from at least July 29, 2008
         through September 10 of 2010, did the Midland
     24
10:13:22 25
         Credit Management account remain on Mr. Brim's
```

```
Transunion credit report throughout that entire
         time?
                 To my knowledge, I believe it did.
                 Mr. Newnom, does Transunion rely on its
         credit data furnishers to investigate consumer
10:13:34
         disputes when they are received regarding a
         specific account?
                 Rely? They're required to look into the
         information.
10:13:44 10
                 And -- I'm sorry.
     11
                 I'm sorry. Yes. They are relied.
         look into the account if the consumer disputes
     12
     13
         the information, yes.
     14
                 In this particular case, did Transunion
10:13:58 15
         provide Midland Credit Management with Mr. Brim's
     16
         disputes regarding the account?
     17
                 We relayed those disputes to Midland, yes.
                 And did Transunion rely on Midland Credit
     18
         Management to investigate those disputes and
     19
10:14:10 20
         respond?
     21
                 They were required to respond to the
     22
         investigation, yes.
     23
                         MR. BENNETT: And I think,
     24
         Mr. Sykstus, we're at Page 72.
                         MR. SYKSTUS: That's what I show.
10:14:40 25
```

## BY MR. BENNETT:

Q Let's go to the inquiry, and we'll come back to that question. If you'll look at Bates 159, which is part of Exhibit 57.

10:14:54 5 A Yes.

8

11

12

13

14

16

17

18

19

21

22

23

24

10:15:38 10

10:15:48 15

10:16:02 20

Q Exhibit 57, Page 159.

MR. BENNETT: Mr. Sykstus, actually, I apologize. Would you please go back up to Page 65 at line -- I'm going to read the question at Line 7.

MR. SYKSTUS: Understood.

## BY MR. BENNETT:

Q What is the impact in terms of credit score on an account being marked as disputed?

A It does not get factored into the credit score.

Q And so from early August, 2008 through September, 2010, the Midland account wouldn't have been factored into Mr. Brim's credit score?

A That is correct.

Page 72, we'll go to the inquiry and we'll come back to that question. If you will look at Bates Page 159, which is part of Plaintiff's exhibit 57.

10:16:16 25 A Yes.

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The entities listed under regular inquiry, Q these entities received information regarding Mr. Brim and his credit from Transunion; is that correct? Α Yes. 10:16:26 And the entity would not be listed under the regular inquiry section if Transunion did not provide that entity with some information regarding Mr. Brim? 10:16:38 10 Correct. And the inquiries are actually contained 11 on a consumer disclosure to educate and inform 12 the consumer as to which entities have used his 13 credit information? 14 10:16:50 15 Α Yes. And at the time of the inquiries that 16 17 we've gone over from July 28, 2008 through November 6, 2009, during that time, the Midland 18 Credit Management account was being reported on 19 10:17:10 20 Mr. Brim's credit report? Yes, it was. 21 22 MR. BENNETT: I don't have any 23 other -- I'm not sure if there are additional 24 sections. The defendant has not designated any. 10:17:18 25 MR. LANGLEY: There are other

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sections. We're going to try the video once. Ιf it doesn't work, we'll do a read-in. I'm not sure if the jury has been made aware of the white binders in their chair. THE COURT: The white binders are 10:17:32 the defendant's admitted exhibits. So are you going to -- Mr. Langley, are you going to state when you get to your exhibit numbers in the deposition book what exhibit 10:18:02 10 number they are in the handbook? 11 MR. LANGLEY: Yes. THE COURT: Do y'all need a break 12 13 first? Okay. 14 MR. BENNETT: We don't have any 10:19:04 15 objection. 16 THE COURT: Okay. 17 MR. LANGLEY: Your Honor, some of the exhibits in the cross-examination are 18 references to the plaintiff's exhibits. One of 19 10:19:18 20 them is to our exhibit notebook. THE COURT: Okay. Could you give 21 22 me one? 23 MR. LANGLEY: Yes. 24 MR. BENNETT: Your Honor, while 10:19:36 25 the video is loading, our final witness will be

### CHERYL K. POWELL, CCR, RPR, FCRR

```
Mr. Brim. And then we will rest. In terms of
         the Court's scheduling knowledge.
                         THE COURT: Okay.
                         MR. LANGLEY: Okay. We gave it
         one try. We'll read it in.
10:20:22
                         MR. BENNETT: I'm sure, Judge,
         both parties will agree at the end of the trial
         to give DVDs to the jury so they can cure
         insomnia on their own time.
10:20:46 10
                         THE COURT: Do what, now?
     11
                         MR. BENNETT: I said, we can give
     12
         the jury copies --
     13
                         THE COURT: No. We certainly
         cannot. I told the jury to begin with what they
     14
10:20:54 15
         hear in the courtroom is what they hear. I don't
     16
                 You weren't here. But I did say that.
         Your co-counsel will verify that. We may not
     17
     18
         give the jury anything except with my permission.
                         MR. BENNETT: Yes, Your Honor.
     19
10:20:58 20
                         THE COURT: And you may not give
     21
         them a DVD.
     22
                         MR. BENNETT: Yes, Your Honor.
     23
                         THE COURT: All right.
     24
         Mr. Tompkins, are you ready? Are you going to be
     25
         Mr. Newnom?
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```
MR. TOMPKINS: I am.
                          THE COURT: All right.
                           CROSS-EXAMINATION
         BY MR. LANGLEY:
                 Can you identify, please, what Defendant's
10:21:18
         Exhibit 19 is?
                 19 is an AUD, an automated update to the
         consumer's credit report.
                 Is that also known as a universal data
         form?
10:21:34 10
     11
                 Yes, it is.
                 And can data furnishers or credit data
     12
         furnishers provide universal data forms to a
     13
     14
         credit reporting agency in order to change or
         remove an account from a consumer's credit
10:21:46 15
     16
         report?
     17
                 Yes, they can.
                 And did Transunion actually receive this
     18
         universal data form from Midland Credit
     19
10:21:54 20
         Management?
                 Yes. We did.
     21
     22
                 And if you would, look at Plaintiff's
     23
         Exhibit 19.
     24
         Α
                Yes.
               Can you identify Plaintiff's Exhibit 19,
10:22:14 25
         0
                         CHERYL K. POWELL, CCR, RPR, FCRR
```

please? This is an internal copy of the automated universal data form. And what actions did Transunion take upon receipt of the universal data form? 10:22:26 We removed the Midland Credit account from the consumer's credit report. And what date did Transunion remove the 0 Midland Credit Management account from Mr. Brim's 10:22:38 10 credit report? 11 9-10, 2010. 12 MR. LANGLEY: Moving to Page 62, Line 15. 13 14 BY MR. LANGLEY: Thank you. Mr. Newnom, Ms. Cauley asked 10:22:56 15 you some questions about the period of time 16 17 during which Transunion reported the Midland account and the dates July 29, 2008 through 18 September 10, 2010 were identified. Do you 19 10:23:10 20 remember those questions? 21 Yes. Α 22 At what point during that time period did 23 the account begin to report as a disputed 24 account? 10:23:18 25 A I believe it was right after the first

CHERYL K. POWELL, CCR, RPR, FCRR

```
investigation we initiated. So I believe it was
         still in July or August of 2008.
                Let me direct your attention to
         Plaintiff's Exhibit 49. Earlier this document
         was characterized as the ACDV that was sent to
10:23:40
         Midland. Do you remember that conversation?
                Yes. I do.
                 Is this the actual document sent to
         Midland, or is it a summary of the information
10:23:52 10
         sent to Midland?
                 It is a summary of the information. An
     11
         actual printout of the computer transaction.
     12
     13
                Would any information sent to Midland in
         connection with this dispute be included within
     14
         Exhibit 7?
10:24:04 15
                That we --
     16
                Which is Plaintiff's 49?
     17
                 That we -- Midland was sent back to
     18
         Transunion or we sent to Transunion, I mean --
     19
10:24:14 20
         I'm sorry. What we sent to Midland?
                 Is there any information that Transunion
     21
     22
         sent to Midland that is not reflected in
     23
         Plaintiff's Exhibit 49?
               No. There is not.
     24
         Α
10:24:26 25
         0
                I think Ms. Cauley asked you at one point
```

did you agree that there was a statement in the ACDV reflecting that the consumer claimed the debt was paid on November 8, 2004. Do you remember that? Yes, I do. 10:24:38 Where is that reflected in exhibit --Plaintiff's Exhibit 49, if at all? It is actually reflected right between the two dotted lines where it says consumer message on the left-hand side. 10:24:50 10 11 Is that information that is actually transmitted to Midland or just information that 12 13 Transunion retains internally? 14 A It is information that is relayed to Midland. 10:25:02 15 16 Do you know if any supporting documentation was sent to Midland in connection 17 18 with the dispute represented on Plaintiff's Exhibit 49? 19 10:25:12 20 Α No. It was not. 21 Was it in response to this ACDV that 22 the -- that Mr. Brim's account was updated to 23 report as disputed? 24 Α Yes. 10:25:22 25 0 And this was in early August, 2008?

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```
Yes, it was.
         Α
                 And at any point prior to the actual
         deletion of the account in September of 2010, did
         the account report as anything other than
         disputed?
10:25:38
                 To my knowledge, it did not.
                 What is the impact in terms of credit
         score on an account being marked as disputed?
                 It does not get factored into the credit
10:25:48 10
         score.
     11
                 And so from early August, 2008 through
         September, 2010, the Midland account would not
     12
         have been factored into Mr. Brim's credit score?
     13
                 That is correct.
     14
         Α
10:26:02 15
                 Would you please look at Plaintiff's
     16
         Exhibit 51?
                      On the second page of Plaintiff's
     17
         Exhibit 51, there is a cover letter dated August
         7, 2008. Is this the cover letter transmitting
     18
         to Mr. Brim the updated credit report following
     19
10:26:28 20
         the investigation of his initial dispute?
                 Yes. It is.
     21
         Α
     22
                 In the second paragraph of that letter,
     23
         there is a sentence that reads, if our
     24
         investigation has not revolved your dispute, you
10:26:40 25
         may add a 100-word statement to your report. Do
```

```
you see that?
                 Yes, I do.
                 Did Mr. Brim ever avail himself of that
         opportunity?
                 I have no knowledge that he did.
10:26:50
                 Is there any document that you're aware of
         that would suggest that he at any time during
         this entire process availed himself of that
         opportunity?
10:27:00 10
                 No. I do not have anything in regards to
     11
         that.
                If you would, please, turn to Plaintiff's
     12
         Exhibit 53.
     13
                 Yes. I have it.
     14
                 And specifically -- specifically, would
10:27:08 15
         you look at the third-from-the-last page, which
     16
         bears the Bates Number TU142?
     17
                Yes. I have it.
     18
     19
                 Under the regular, regular inquiry
10:27:32 20
         section, Ms. Cauley had asked you some questions
         about the top four inquiries underneath that
     21
     22
         heading. Do you remember those questions?
     23
                 Yes. I do.
     24
                 And those inquiries were from RBC Bank,
10:27:44 25
         First Metropolitan, Platinum Mortgage, and
```

```
Hometown Lenders. Do you see those inquiries on
         Plaintiff's Exhibit 53?
                 Yes, I do.
                 Do you know why any of these entities were
         requesting information from Transunion?
10:27:58
                 I don't know specifically why. But it was
         for some credit transaction.
                 Do you know what type of information
         Q
         specifically they requested?
10:28:08 10
                 No. I do not.
     11
                 Do you know what type of information they
     12
         were seeking?
                 No. I do not.
     13
                 Do you know how they used it, if at all,
     14
         any of the information they may have received
10:28:18 15
         from Transunion?
     16
     17
                 No. I do not.
                 And if you would, please, turn to
     18
         Plaintiff's Exhibit 57. And specifically, I want
     19
10:28:36 20
         to ask you about the second-from-the-last page,
         which bears a Bates Label TU159.
     21
     22
                 Yes.
         Α
     23
                 Under regular inquiries, there is listed
     24
         an inquiry from Wachovia and American Express at
10:28:52 25
         the top. Do you see that?
```

```
Yes, I do.
         Α
                 Do you know what information Wachovia or
         American Express requested?
                 No, I do not.
                 Do you know specifically what information
10:29:00
         Transunion sent, if any, to Wachovia and American
         Express?
                 No. I do not.
                 Do you know why Wachovia or American
10:29:10 10
         Express may have been requesting information from
     11
         Transunion?
                 No. I do not.
     12
                 If Transunion provided any information at
     13
         all to Wachovia or American Express, do you have
     14
         any knowledge of how they used it, if at all?
10:29:22 15
                 No. I do not.
     16
     17
                 Staying with Plaintiff's Exhibit 57 for a
         moment and looking at the pages bearing Bates
     18
         Label 156 through 157?
     19
10:29:36 20
         Α
                 Yes.
                 How many adverse accounts are reflected in
     21
     22
         this report marked as Plaintiff's Exhibit 57?
     23
                 I'm showing three.
     24
                 And if we go back to Plaintiff's Exhibit
10:29:56 25
         53
            for just a moment and look specifically at
```

```
Bates Label 139 and 140, how many adverse
         accounts are reflected in the report marked as
         Plaintiff's Exhibit 53?
                 Three.
                Mr. Newnom, can you say whether the
10:30:18
         Midland Credit Management account -- if any
         creditors saw it at all actually mattered to
         them?
                What they actually viewed as to what they
10:30:32 10
         actually physically saw, no, I cannot. Or how
     11
         they determined it.
     12
                And can you -- can you say with any degree
         of certainty whether it mattered if they saw it?
     13
                No. I cannot.
     14
         Α
                 To know whether or not it mattered, we
10:30:44 15
         would have to ask the entities making the
     16
     17
         inquiry?
            Yes. You would.
     18
         Α
                         MR. LANGLEY: That's all I have.
     19
10:30:52 20
                         THE COURT: Okay. Anything else?
     21
                         MR. BENNETT: No, Judge.
     22
                         THE COURT: Okay. We're going to
     23
         take a morning break. While you're on break,
     24
         don't discuss the case among yourselves. And
10:31:00 25
         don't let anyone discuss it in your hearing or
```

```
your presence. And come back in 20 minutes.
                          (Jury excused.)
                          (Short recess.)
                          (In open court. Jury present.)
                          THE COURT: Have a seat. You
10:57:42
         ready for your next witness?
                          MS. CAULEY: Yes, Your Honor. The
         plaintiff calls Jamon Brim.
                          (Witness sworn.)
10:58:04 10
                          THE COURT: Good morning.
     11
                          THE WITNESS: Good morning.
                          COURTROOM DEPUTY: Will you state
     12
     13
         your first and last name?
     14
                          THE WITNESS: My name is Jamon
10:58:24 15
         Brim. J-A-M-O-N B-R-I-M.
     16
                          COURTROOM DEPUTY: Thank you.
     17
                          DIRECT EXAMINATION
     18
         BY MS. CAULEY:
                 Mr. Brim, can you tell us, please, your
     19
10:58:38 20
         address?
                 My address is 2426 Autumn Ridge Drive,
     21
     22
         Southwest, Huntsville, Alabama 35803.
     23
                 And how long have you lived in the
         Huntsville area?
     24
10:58:48 25
         A I have lived in Huntsville for
                         CHERYL K. POWELL, CCR, RPR, FCRR
                         Federal Official Court Reporter
```

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approximately 11 years.
         0
                What --
                 On my own.
                 What brought you to Huntsville?
                 I first came to Huntsville, Alabama in
10:58:58
         1996 when I attended -- when I started Alabama
         A & M. But I left and -- in, I think, '98 or '99
         to go back home to work. I think I took two
         jobs. Because at school, I was broke, basically,
10:59:20 10
         to be honest.
     11
             And after you went back home, did you come
         back to the Huntsville area?
     12
     13
         A I did come back to go to school. And I
         think I came back in 2000.
10:59:30 15
                Have you been in Huntsville ever since
         2000, then?
     16
     17
                I have.
                Do you consider Huntsville home now?
     18
     19
                I do.
         Α
10:59:36 20
         Q
                 When you came back to Huntsville, did you
         go back to Alabama A & M?
     21
     22
                 I did.
         Α
     23
                 And did you finish school there?
                 I finished school at Alabama A & M.
     24
         Α
10:59:46 25
         0
                What kind of degree do you have from
```

```
Alabama A & M?
                 I have a degree in -- I'm sorry. I have a
         bachelor of science in business administration,
         concentration in management with a minor in
         accounting.
10:59:58
                 And while you were attending school at
         Alabama A & M, did you have to work several
         part-time jobs at the same time?
                 I did. I worked the whole time I was at
11:00:10 10
         school, I think. What -- would you like to know
     11
         each job?
     12
                No.
                 I worked the whole time I was in school.
     13
                 Okay. And what year did you graduate from
     14
         Alabama A & M?
11:00:20 15
                 I graduated in 2004.
     16
     17
                 Okay. And what did you do when you
         graduated from school?
     18
                 I worked and went to school. I started
     19
11:00:34 20
         school at University of Maryland University
         College after I graduated from Alabama A & M.
     21
     22
         And I worked at Target Distribution Center.
     23
                 Were you working at Target full time when
     24
         you started at the University of Maryland
11:00:48 25
         University College?
```

```
Α
                I was.
         0
                 That's a hard name.
                 And how were you attending that school?
                 It was on line. It was an on line,
         working on my master's. A dual master's in
11:00:56
         accounting and information technology.
                 And when you started attending that school
         on line, is that what prompted you to purchase
         the computer?
11:01:06 10
                 That was. I needed the computer to attend
     11
         school on line.
                 And I'm going to come back to the
     12
     13
         purchasing of the computer. But can you tell us
         where you're employed now?
     14
11:01:20 15
                 I am now employed with Yellow Book USA.
         Α
     16
                 And how long have you been working for
     17
         Yellow Book?
                 I have been working with Yellow Book since
     18
         June of 2005. June 22nd, actually, 2005.
     19
11:01:34 20
         Q
                 What do you do for them?
     21
                 I am a regional distribution manager.
     22
         Would you like to have a description?
     23
                 Yes.
     24
                 I am a regional distribution manager. I
11:01:48 25
         just travel around and hire independent
```

contractors to deliver phone directories. And I recruit, train people how to deliver phone directories. I also am responsible for people who are hired to work inside the warehouse, like, as far as dock workers who hand the people the 11:02:04 phonebooks to put in their car. We used to have verification operators who verified that people received their phonebooks. I used to have to train them and were responsible for them. 11:02:18 10 And what is your -- you said you were 11 regional distribution manager. What region do 12 you cover now? I am responsible for all of Alabama. 13 Recently, a young lady was promoted in Pensacola, 14 Florida, let's say, a month ago. Now she also 11:02:32 15 16 covers the lower part of Alabama. So I am 17 responsible from north Alabama to Montgomery, basically. 18 Because you have such a broad territory, 19 11:02:50 20 does your job require that you travel a good bit? I travel 90 percent of the time. 21 22 And when you travel, how does that work? 23 Do you stay in hotels or --24 I am. I stay in hotels for the duration 11:03:06 25 of the project. We call the markets, which is

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the phone directory -- whenever we're delivering, we call that project. So I stay in the project from start to end, finish. And when you travel and you have to stay in those hotels, do you pay for those expenses 11:03:22 out of your pocket first or how does that work? I do. We have to pay for our expenses first. Say, for instance, I have to rent a hotel or buy food. In the instance, I might have to go 11:03:38 10 to Florida. So I would have to rent a hotel and 11 rent a car because they fly us to Florida or 12 Iowa. And rent everything upfront. And then we 13 submit expense reports, and then they reimburse 14 us. 11:03:54 15 Now, let's go back to the Dell computer. 16 Okay. 17 And could you tell us in 2004 -- can you 18 just describe the process about how you went about purchasing the computer? 19 11:04:10 20 Α I did. In 2004, the only reason I purchased the computer with Dell is because we 21 22 had a discount -- an employee discount program 23 with Target. So it allowed me to purchase a 24 computer at a discount rate. So when I bought 11:04:24 25 the computer in 2004, I wanted to establish

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credit to get my credit on track. So I purchased a computer on credit. But I knew I was going to pay for the whole thing within 30 days before they started charging interest. So I ordered the computer. And I shortly 11:04:42 received it after. And I think -- would you like to know how I paid and everything right now? Well --Q Α I mean, because I --THE COURT: It's all right if you 11:04:56 10 11 just tell us. She will stop you. You asked me --12 THE COURT: It's fine. Just tell 13 14 me what you did. THE WITNESS: I'll go into 11:05:04 15 16 everything. It comes to me, and I remember. 17 THE COURT: Just tell us where you 18 ordered the computer and how you went about paying for it. 19 11:05:12 20 THE WITNESS: When I ordered the computer, I called in and told them on November 21 22 that I wanted to pay because I knew that I wanted 23 to pay within 30 days. So I called in. And I 24 spoke with -- it was a lady at the time. And I 11:05:26 25 called --

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THE COURT: At Dell's?

THE WITNESS: Yes. At Dell. And she -- she told me how to -- she told me -- she added in a surge protector and everything. So I bought everything. She told me the price. She told me I could pay by check. And I did not pay by check because I didn't have any checks. I had a bank account, though. So I paid by check over the phone, which was the easiest thing. So I paid by check for the balance over the phone for the computer.

# BY MR. CAULEY:

11:05:38

11:05:50 10

11:06:00 15

11:06:18 20

11:06:28 25

11

12

13

14

16

17

18

19

21

22

23

24

Q When the Dell representative told you you could pay by check or check over the phone, did she tell you the exact amount to -- that they were going to transfer as check by phone?

A She did. I think it was -- I might be wrong, but I think it was \$954.12. Close to it.

Q And after you sent in the -- that payment by check over the phone, were the funds withdrawn from your bank account?

A They were.

Q Was that in November of 2004?

A That was in November of 2004. Maybe I purchased it on November the 4th, but the funds

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didn't come out of the bank until November the 8th.

THE COURT: Of 2004?

THE WITNESS: Of 2004.

## BY MS. CAULEY:

11:06:38

11:06:44 10

11:06:58 15

11:07:14 20

11:07:28 25

11

12

13

14

16

17

18

19

21

22

23

24

Q After you made the payment and the funds were withdrawn from your bank, did you receive any communications from Dell on that computer bill?

A After I purchased the computer, I started receiving bills from Dell.

Q What did you do when you started getting bills from Dell?

A At first I was, like, what is this? I paid for my computer. Then I -- I thought they were wrong. So I called in. And they asked me -- they transferred me to the finance department. I told them that the computer was paid for. And they asked me for a receipt. I didn't have a receipt. And then they asked me for a check it was, I think. So I told them I didn't pay by check, but I paid by check over the phone. And I said, I can provide my bank statement. So they said that was fine. So that was the end of that phone call. But I went to

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```
the bank and obtained --
                Mr. Brim, when they said you could provide
         a bank statement, did you actually provide a copy
         of your bank statement to Dell?
11:07:40
                I did.
                Did you mail that in or fax it in? How
         did that work?
         A I faxed that in at first.
      8
                         THE COURT: Did you go to the bank
11:07:48 10
         to get it? Is that what you were about to say?
     11
                         THE WITNESS: I did. I went to
     12
         the bank to get the bank statement because I
         didn't have it.
     13
     14
         BY MS. CAULEY:
11:07:54 15
                 I'm sorry. So you actually had to go to
     16
         Redstone to get a copy of the bank statement?
     17
                I did.
         Α
                And after you did that is when you faxed
     18
         it in to Dell?
     19
11:08:04 20
         Α
           I did.
                After you faxed in that bank statement to
     21
     22
         Dell, did you continue to receive bills from
     23
         Dell?
                I did.
     24
         Α
11:08:10 25
        0
                Tell us what you did when you continued to
```

receive bills from Dell.

A I sent them bank statements. I called in again. And they asked me for -- they said -- they asked for a transactional detail report. So at that time, I didn't have a clue what a transactional detail report was.

So I went to the Madison branch of
Redstone Federal Credit Union, and I asked for a
transactional detail report. I had my bank
statement with me. The lady who I spoke with at
that branch told me that she didn't know what a
transactional detail report was. And then she
looked at my bank statement. She said, this is
it.

I said, I bought a computer from Dell.

And they're saying they never received the funds.

She said, this is it right here. She pointed at the specific account and she said, this is a transactional detail report. This shows you that the money came out of the account; that it was paid.

Q And after you had been to Redstone Federal Credit Union and been informed that your bank statement was a transactional detail report, did you contact Dell and tell them that same thing?

## CHERYL K. POWELL, CCR, RPR, FCRR

Federal Official Court Reporter 1729 Fifth Avenue, North Birmingham, AL 35203 256-508-4050/wrd4wrdrpr@aol.com

11:08:26

9

11:08:40 10

12

11

13

11:08:50 15

16

18

17

19 11:09:04 20

21

22 23

24

11:09:14 25

```
I did contact them. And I let her know
         that my bank told me -- that lady told me that
         that was a transactional detail report.
                And at that time, did Dell ever explain to
         you that anything else was necessary in order to
11:09:28
         get this taken care of?
                They did not.
                Did you continue to receive bills from
         Dell?
                I did.
11:09:36 10
                And did you make any other phone calls to
     11
         Dell and try to talk to someone about the
     12
     13
         problem?
           I think I worked with someone in the
     14
         recovery department, which basically the same
11:09:44 15
         thing happened. I sent my bank statement in.
     16
     17
                Did you have problems getting this matter
         resolved with Dell?
     18
                I did.
     19
         Α
11:09:54 20
         Q
                And did you end up having to file a
         complaint with the Better Business Bureau?
     21
     22
                 I did.
     23
                And was the complaint with the Better
     24
         Business Bureau, was that done on line?
11:10:08 25
         A It was.
```

```
We're going to take a look at something in
         Q
         the defendant's book.
         Α
                Okay.
                Exhibit 8. Do you have Exhibit 8?
                I do. I do. This is the complaint I
11:10:48
         filed with the Better Business Bureau.
              If you will look under the entry for
         October 29th, 2005 --
         Α
                Okay.
11:11:06 10
                Can you read -- it's consumer rebuttal to
     11
         business response. And can you read what you
         entered on October 29th, 2005?
     12
               Okay. The received business rebuttal
     13
         response is did -- this statement here? I'm
     14
11:11:28 15
         sorry. This the one you want me to read?
                         THE COURT: From 11-04, 2005?
     16
     17
         BY MS. CAULEY:
                No. 10-29. Do you see it? Middle of the
     18
     19
         page.
11:11:36 20
         A I see it. Consumer rebuttal to business
         response. The consumer indicated he/she did
     21
     22
         not --
                Right under that is actually your entry.
     23
         It starts with I have.
     24
11:11:54 25
        A I am writing in response -- right there?
```

```
No. Right above that. Under October
         Q
         29th.
                 Are we on the same page?
                 Let me show it to you.
                         THE COURT: There's actually a
11:12:04
         hole.
                         THE WITNESS: It is.
                         THE COURT: You can't see what it
         says.
                         THE WITNESS: You can't see.
11:12:10 10
     11
         BY MS. CAULEY:
                 I'll give you my copy. It's right here.
     12
                 Yes. That's where the hole is.
     13
                 I have sent several bank statements, and
     14
         the problem still has not been resolved. I sent
11:12:22 15
         a statement with the bank letterhead and still
     16
     17
         nothing happened. The bank stated that they did
         not know what a transactional detail report was
     18
         but showed the payment on their end. The bank is
     19
11:12:42 20
         Redstone Federal Credit Union in Huntsville,
         Alabama, and the telephone number is
     21
     22
         (256) 327-1625.
     23
                 Thank you, Mr. Brim.
                 You're welcome.
     24
         Α
11:13:04 25
         0
                 That was actually your response to the
```

```
Better Business Bureau in October of 2005?
                 Okay.
         Α
                 Is that right?
                 That is. I mean, that's kind of fuzzy.
         That is quite a few years ago.
11:13:16
                 After you had sent this in to the Better
         Business Bureau and notified them that your bank
         had indicated a transactional detail report was
         the same as your bank statement?
11:13:30 10
                 Correct.
     11
                 Did you receive any other documentation
     12
         from Dell where you were able to resolve the
         dispute?
     13
     14
         Α
                 No.
11:13:40 15
                 I'm sorry?
                 I just received a bill.
     16
     17
                 Did you ever have any difficulties
         communicating with Dell with their telephone
     18
         operators, maybe?
     19
11:13:52 20
         Α
                 We did. Every time I called in, it would
         be foreign guys. I think they were Indian. So
     21
     22
         we had a language barrier problem.
     23
                 And were you ever able to work out the
     24
         dispute you had with Dell prior to the account
11:14:10 25
         being sold to Midland?
```

```
I did not.
         Δ
                How did you learn that Dell had sold your
         account to Midland?
                I received a bill from Midland -- a letter
         from Midland, letting me know that they have
11:14:24
         taken over the account from Dell.
                Do you recall approximately when you
         received that first letter from Midland?
         A
                If I -- I think it was maybe October, '07.
11:14:44 10
         Maybe.
     11
                Okay. And in October of 2007, do you
         recall what that letter from Midland stated?
     12
                It stated that I owed a balance for a
     13
         computer from Dell, and that I had 30 days to
     14
11:15:00 15
         respond to the letter -- to the letter and deny
     16
         the balance.
     17
                Did you respond to that letter from
         Midland in October of 2007?
     18
                I did. Because I actually received a call
     19
11:15:14 20
         from Midland. And I spoke to a lady. When she
         did call, she told me about the balance. We
     21
     22
         discussed everything about the balance with Dell.
     23
         And I told her that it was paid. She asked me
         for a check by phone. I told her that I did not
     24
11:15:32 25
         have a check -- a cancelled check, but I could
```

provide her my bank statement. And she transferred me to a supervisor, a manager. And this was a guy at that time. And I told him that I had a bank statement. So I faxed it in to him because he asked for a bank statement. So I 11:15:48 faxed it in. Okav. Now, this call you received, was that, like, a collection call from Midland? Α It was a collection call. It was a collection call from Midland. 11:15:58 10 11 They were trying to get payment from you? 12 They were. 13 And that -- you think that call that you had with Midland or that you received from 14 Midland -- was it within the 30 days of the 11:16:08 15 16 letter you had gotten from Midland? MR. LANGLEY: Objection. Leading. 17 THE COURT: Overruled. 18 I received a call in 2007 between -- if it 19 11:16:20 20 had to be October, I would say maybe in November. BY MS. CAULEY: 21 22 And at the time that you spoke with the 23 manager from Midland and you faxed in your 24 statement, did you receive any other communication from Midland? 11:16:30 25

CHERYL K. POWELL, CCR, RPR, FCRR

```
I did.
         Α
                 What's the next communication you received
         from Midland?
                 Another bill.
                 Do you recall when that was?
11:16:38
                 I would think maybe another one -- I
         received one between two calls -- between the
         call after the first bill. So I think I received
         another one in either December or January. I
11:17:00 10
         can't remember.
     11
                 That would have been December of 2007,
         January, 2008?
     12
     13
         Α
                 Yes.
     14
                 And after you received that letter, did
11:17:08 15
         you take any steps to contact Midland or provide
         them another bank statement?
     16
     17
                 I provided them another bank statement.
                 If you will, look in the black binder
     18
         that's up there, the plaintiff's exhibits, and
     19
11:17:32 20
         look at Plaintiff's Exhibit 3.
     21
                Which exhibit?
         Α
     22
                 Three.
         0
     23
                 Okay.
     24
                 Mr. Brim, I told you the wrong number.
                                                            Ι
        meant Number 2.
11:17:54 25
```

```
Okay.
         Α
                 Mr. Brim, let me ask you this: Have you
         ever testified in court before?
                 I have not.
                 Are you nervous?
11:18:08
         Q
                 A little bit.
         Α
                 I understand. If you'll look at
         Plaintiff's Exhibit 2 --
         Α
                 Okay.
11:18:18 10
                 And turn to Page 2.
     11
         Α
                 Okay.
                 Is this a copy of the bank statement that
     12
         you provided to both Dell and to Midland?
     13
                 It is.
     14
         Α
11:18:34 15
                 So this is the bank statement we've been
     16
         referring to?
                 This is the bank statement.
     17
                 Now, if you'll turn, please, to Exhibit
     18
         Number 11 --
     19
                          THE COURT: Let me ask you
11:18:46 20
         something. Is the statement that is on Page 2 of
     21
     22
         that exhibit where it says 11-08 Dell Financial
         Payment 041106 $954.12 -- is that what you sent
     23
         to them?
     24
11:18:58 25
                          THE WITNESS: Yes, ma'am. And I
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circled it. I actually circled the payment.
                         THE COURT: All right. So this is
         just a different copy than the copy you sent?
                         THE WITNESS: This is the
         different copy.
11:19:14
                         MS. CAULEY: Your Honor, this is
         the actual certified copy from Redstone.
                         THE COURT: Next exhibit?
                         MS. CAULEY: Number 11. I'm
11:19:30 10
         getting ahead of myself. Number 10.
     11
                         THE WITNESS: Okay.
     12
                         MS. CAULEY: Apparently I can't
     13
         count this morning.
         BY MS. CAULEY:
     14
                Exhibit 10 is a letter from Midland, dated
11:19:44 15
         January 22nd, 2008. Do you recall if you ever
     16
         received this letter?
     17
                I did receive this letter.
     18
     19
                And what happened when you got Plaintiff's
11:19:58 20
         Exhibit 10?
                The first thing that I did was thought
     21
     22
         that how did a 900-dollar computer become $1,600.
     23
         And then I wondered why am I still receiving a
         bill for this.
     24
11:20:16 25
        Q At the time that you received Plaintiff's
```

```
Exhibit 10, had you already forwarded a bank
         statement to Midland on two previous occasions?
                 I did.
                 And will you read the -- under the current
         owner section where it sort of is indented, under
11:20:30
         that, there is a statement.
                Original --
         Α
                Starts with this letter?
         Α
                 Okay.
11:20:42 10
                 Can you read that?
         Q
     11
                 This letter is to inform you that Midland
     12
         Credit Management, Incorporation is considering
     13
         forwarding this account to an attorney with the
         intent to initiate legal action to satisfy the
     14
         debt.
11:20:54 15
                 How did you feel when you got this letter
     16
         that says they were intending to sue you?
     17
                Very upset. Highly upset. I was upset
     18
         when I received this letter. It felt like
     19
11:21:08 20
         talking to a wall, sending bank statements to
         people who obviously did not do anything with the
     21
     22
         bank statement. I mean, didn't let me know what
     23
         else I needed to send.
     24
                Did you contact Midland after you received
11:21:22 25
         this letter?
```

After this one, I don't think I did. Because -- after this letter, I think I was traveling at the time. When you're traveling, are you gone for weeks at a time? 11:21:40 Months. Weeks, months at a time. When you got back from traveling, did you have any other communication regarding Midland or from Midland? I did. I think at that time I was gone 11:21:50 10 11 until maybe midsummer. And I received -- I got 12 home, and it was a card on my door from a 13 sheriff. And after I saw the card, I pulled the 14 card out of my door. And I looked at the -- I 11:22:12 15 checked my mail. And it was a -- I was sued by 16 Midland, represented by a law firm, Schwartz it was, I remember. 17 Let me ask you if you will turn to 18 Plaintiff's Exhibit 17. 19 11:22:34 20 Α Okay. 21 Did you receive a copy of this letter 22 that's Plaintiff's Exhibit 17? 23 This is the letter that I received. 24 When you came back from traveling for 11:22:46 25 work, you had a card on your door from the

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```
sheriff and this letter, as well?
         Α
                 I did.
                 And what steps did you take after you had
         the letter from the attorneys and the notice from
         the sheriff and card from the sheriff to contact
11:23:06
         Midland?
                At this point, I think this was mid July
         or when was this? When I received this letter,
         April, I think I was out of town still. So I
11:23:28 10
         didn't respond to this letter.
     11
                 And if you look at Plaintiff's Exhibit 18,
         that's actually a copy of the lawsuit that was
     12
         filed against you in May of 2008. Did you ever
     13
         actually get a copy of that lawsuit personally?
     14
                 I didn't because I was out of town.
11:23:50 15
         Α
                 During this same time frame in the summer
     16
     17
         of 2008, were you applying for credit at all?
                I was.
     18
         Α
     19
                 What reasons were you applying for credit?
11:24:04 20
         Α
                 I wanted to get a house in 2008.
                 Why were you looking for a house?
     21
         0
     22
                 Because I wanted -- I wanted a yard.
     23
         have two children, ages seven and four. I wanted
         a yard that my kids can play in, to grow up in a
     24
11:24:20 25
         house.
```

```
Have you ever owned your own home before?
         Q
         Α
                Never.
                And so in summer of 2008, you had started
         that process of trying to --
                 I did. I wanted to get the financing
11:24:30
         first because I thought that that would be
         easier.
               And where did you go initially to try and
         get financing for a home?
                 I think it was several lenders at that
11:24:38 10
     11
         time. I think Lending Tree was one. First
         Metropolitan was one. Countrywide was one. And
     12
     13
         Platinum Mortgage was one.
     14
                And are those places that you had gone at
11:25:02 15
         various times in 2008 to apply for a mortgage?
     16
                 It was.
     17
                 In July of 2009, do you recall if you were
         denied a mortgage?
     18
     19
                I was.
         Α
11:25:10 20
                 I'm sorry. 2008.
                 Oh. I'm sorry. I didn't even hear -- did
     21
     22
         you say another year?
     23
                 I did. In July of 2008, were you denied a
     24
         mortgage?
11:25:20 25
        A I was.
```

```
As a result, did you request copies of
         your credit report?
                I did.
                Can you tell us about that process, how
         you went about obtaining copies of your credit
11:25:28
         reports?
           I did that on line with Equifax. Maybe I
         paid for one. Equifax. I can't remember. And
         then I called Transunion. And I did it on line,
11:25:48 10
         as well. And I did it on line with Experian.
     11
                And did you actually receive copies of
         your credit reports in July of 2008?
     12
              I did.
     13
         Α
     14
                What did you do when you received those
11:26:00 15
         copies?
                I looked at the credit report thoroughly.
     16
     17
         And I had a few disputes.
                Did you prepare a letter to send to the
     18
         credit reporting agencies?
     19
11:26:14 20
         A
                I did. I had to -- I did a little bit of
         research to find, you know, dispute letters for
     21
     22
         credit reporting. And I also used a couple of
         business communication books that I had.
     23
     24
         Q Is that how you drafted your dispute
11:26:30 25
        letter?
```

```
It is.
         Α
                 All right. And if you'll look in your
         notebook to Plaintiff's Exhibit 37. Do you have
         that?
                 I do. Is it the letter that I sent?
11:26:58
                 Right. Is this -- can you tell us,
         please, what Plaintiff's Exhibit 37 is?
                 This is the dispute -- it looks like the
         A
         dispute that I sent to Equifax.
11:27:12 10
                And in your letter to Equifax, what
     11
         account did you dispute?
             I disputed the Midland Credit Management
     12
     13
         account.
     14
                And did you give a reason of why you were
         disputing that account?
11:27:24 15
                 I did. Let's see. Because the account
     16
     17
         was paid on November the 8th, 2004.
                When you sent -- did you mail this letter
     18
     19
         to Equifax?
11:27:36 20
         Α
                 I did mail this letter.
                 When you sent this letter to Equifax, did
     21
     22
         you send any other documentation with it?
     23
                 I sent along with this my credit report
     24
         that came with it, and I think I sent my driver's
11:27:54 25
         license.
```

```
Did you include a copy of your bank
         statement, as well?
                 I did.
         Α
                 Do you recall how you mailed your dispute
         letter to Equifax?
11:28:04
                 Certified mail.
         Α
                 If you'll turn back to Plaintiff's Exhibit
         4.
         Α
                 Okay.
                 Is Plaintiff's Exhibit 4 the green card
11:28:38 10
     11
         you got back from your certified mail?
                 This is a copy of it.
     12
     13
                 On Page 2, can you tell us what that is?
                 Page 2 is the certified receipt that I
     14
11:28:54 15
         sent.
                 It looks like it cost $6.41 to mail your
     16
     17
         letter to Equifax?
                 It did cost that.
     18
     19
                 Did you actually pay all these charges
11:29:06 20
         yourself to mail these --
                 I did pay these charges.
     21
     22
                 In addition to writing Equifax, did you
     23
         write anyone else a dispute letter in July of
         2008?
     24
11:29:18 25
                I did. I wrote a letter to Transunion,
         A
```

```
Experian, and also Midland.
                 All right. Let's look at your letter to
         Transunion first. And that is page -- Exhibit
         46.
                40 --
         Α
11:29:42
                46.
         0
                 Okay. Okay.
         Α
                 When you sent your letter to Transunion,
         what accounts did you dispute on your Transunion
11:30:00 10
         credit report?
     11
                I disputed Midland Credit Management,
         Texas Guaranteed Student Loan, and Professional
     12
     13
         Finance.
                What reason did you give for disputing the
     14
11:30:20 15
         Midland account?
               Because the bill was paid on November the
     16
     17
         8th, 2004.
     18
               And what reason was given for the two
         other accounts that you disputed?
     19
11:30:26 20
         Α
                 They were my brother's.
                 Did you include a bank statement with your
     21
     22
         letter to Transunion?
     23
                I did. I included by bank statement, my
     24
         social security card, and driver's license.
11:30:44 25
         Q And if you'll look at Plaintiff's Exhibit
```

```
45?
                 Okay.
         Α
                 Do you recognize Exhibit 45?
                 I do.
         Α
11:31:02
                 Can you tell us what that is?
         Q
                 This is a letter that came along with my
         credit report that I filled out.
                 Did Plaintiff's Exhibit 45 go to
         Transunion, as well?
11:31:16 10
                 I did.
     11
                 On that, what accounts did you dispute?
                 Midland Credit Management.
     12
                 What reason did you give for disputing the
     13
         Midland Credit Management?
11:31:30 15
                 That I paid this account in full, and I
         Α
         paid this before it went to collection or before
     16
     17
         it was charged off.
                 And then if you'll please turn to
     18
         Plaintiff's Exhibit 63.
     19
                I have it.
11:31:52 20
         A
     21
                 Can you tell us what Plaintiff's Exhibit
     22
         63 is?
     23
                 This is the dispute that I sent to
     24
         Experian.
11:32:18 25
        Q And with the dispute to Experian, did you
```

```
continue to dispute the Midland account?
         Α
                 I did.
                 Did you include any documentation with
         your dispute letter to Experian?
                 I did. It's transactional detail report
11:32:30
         from my bank and a copy of my social security
         card and my driver's license.
                 At the time that you were sending in the
         Q
         disputes to Transunion, Equifax, and Experian,
11:32:46 10
         did you send a dispute letter to any other
     11
         company?
                 I sent a dispute letter to Midland.
     12
         Α
                 And that's going to be Plaintiff's Exhibit
     13
         11.
     14
11:33:04 15
         Α
                 Okay.
                 If you'll turn to that, please.
     16
     17
         Α
                 Okay.
                 Is Plaintiff's Exhibit 11 a copy of the
     18
     19
         letter that you sent to Midland in July of 2008?
11:33:40 20
         Α
                 It is.
                 Can you read what you put in your letter
     21
     22
         to Midland, please?
     23
                 Dear sir or ma'am, I am writing to you in
         response to the recent communication I received
     24
         from your office regarding this alleged debt. I
11:33:52 25
```

```
refuse to pay this debt. And I will not pay this
         debt. I dispute this debt. Please do not
         contact me again by phone or in writing. The
         reason I dispute this debt is because this debt
         was paid on November the 8th, 2004. Accompanied
11:34:04
         is a transactional detail report from my bank,
         showing the payment and transaction number.
                At the time that you sent this letter, had
         O.
         you received additional telephone calls from
         Midland to collect the account?
11:34:22 10
     11
                I don't think so at that time.
                And when you sent this letter, did you
     12
     13
         include anything other than the transactional
         detail report from Redstone?
     14
                Did I include anything with this? I think
11:34:36 15
         it was maybe my driver's license copy.
     16
     17
                But you at least sent the transactional
         detail report from Redstone?
     18
                I did send that transactional detail
     19
11:34:52 20
         report.
                After your letter to Midland in July of
     21
     22
         2008, did you receive any response back from
     23
         Midland?
                In 2008?
     24
         Α
11:35:02 25
         0
                Yes. After your letter of July 29th,
```

```
2008.
                 Not right offhand, I didn't.
                 Did you receive any telephone calls from
         Midland?
                 I didn't.
         Α
11:35:10
                 After you sent in your dispute letters to
         the credit bureaus, did you receive an updated
         credit report from each of the three credit
         reporting agencies?
11:35:22 10
                 I did.
                 And do you recall if in response to your
     11
         letter to Transunion -- what was the outcome of
     12
         your dispute regarding the Midland account?
     13
                 That they did not take it off; that the
     14
         account was valid. Midland reported the account
11:35:40 15
         as valid, and they kept it on there.
     16
     17
                 And what about with Equifax? Do you
         recall what happened with Equifax?
     18
                 Equifax -- I think they -- I think they
     19
11:35:54 20
         left it on there. But I think they -- the
         balance was zero with Equifax.
     21
     22
                 And what about Experian? What was the
     23
         result of your dispute with Experian?
                It was still on there as collection
     24
11:36:06 25
         account.
```

```
Were the other two accounts that you
         Q
         disputed with Experian and Transunion, were those
         off of your credit when you got the results?
                 They were off.
                 How did you feel when you got these
11:36:18
         updated credit reports from Equifax and
         Transunion and Experian with the Midland account
         still appearing?
                 I felt helpless because I sent bank
11:36:32 10
         statements. No one told me to send anything
     11
         else. So I sent bank statements over and over
         and over. I didn't know what else to do. It was
     12
     13
         just -- I felt like it was a lost cause.
     14
         Q
                 After the credit reports came back, did
11:36:48 15
         you continue to apply for a mortgage?
                 I did.
     16
     17
                 And at the time that you were applying for
     18
         the mortgages, were any of those mortgages given
         to you in 2008?
     19
11:36:58 20
         Α
                 No.
     21
                 And when you applied for those mortgages,
     22
         did you understand the mortgage companies would
     23
         look at your credit?
                I did.
     24
         Α
11:37:08 25
         0
                At the time that you were denied those
```

```
mortgages, were you aware of any other reason you
         would have been denied credit?
                 No.
         Α
                 From August of 2008 until the end of 2008,
         December 31st, 2008, did you ever receive any
11:37:26
         letter from Midland, stating they needed some
         specific item from you in order to clear this up?
            I didn't.
         Δ
                 In 2009, did you continue to apply for
11:37:44 10
         credit?
     11
                I did.
         Α
                 And what was the results of your attempts
     12
     13
         to get credit?
                 Denied.
     14
         Α
11:37:50 15
                 Did you take any steps to dispute again
     16
         with the credit reporting agencies?
     17
                 In -- when, now?
         Α
                 In 2009.
     18
         Q
                 I did.
     19
         Α
11:38:00 20
         Q
                 And can you tell us when you disputed
         again with the credit reporting agencies?
     21
     22
                 It was at the time that I was looking to
     23
         purchase a house.
     24
            Had you actually found a house that you
11:38:12 25
         liked?
```

I did. I found a house that I wanted. Ιt was a foreclosed home in a nice neighborhood. So I found a house that I wanted. Is that the house that you're currently living in? 11:38:24 It is. Α And so what happened when you found that house? Did you take some steps to try and get approved for your mortgage? 11:38:32 10 I did. I disputed the account with the 11 credit bureaus, and then I sent dispute letters 12 again. And then I sent dispute letters to Midland. 13 (Discussion off the record.) 14 11:39:18 15 BY MS. CAULEY: Let's look at Plaintiff's Exhibit 12. 16 17 Α Okay. Can you identify Plaintiff's Exhibit 12? 18 Looks like the letter that I sent to 19 11:39:40 20 Midland. And can you tell us what you said to 21 22 Midland on March 10th of 2009? 23 Dear sir, ma'am, I am writing you again to 24 specifically dispute this debt. I do not owe 11:39:54 25 this debt. And I specifically do not owe any

CHERYL K. POWELL, CCR, RPR, FCRR

debt to Dell which you are collecting on. I refuse to pay this debt. And I will not pay this debt. I dispute this debt. Please do not contact me again in any manner by phone or in writing. This debt was paid in full on November the 8th, 2004. I have enclosed a copy of my bank statement, showing that this debt was paid -- this debt was for.

Please immediately correct my credit report with all three credit reporting agencies to specifically show a zero balance and no derogatory or negative information at all.

Thank you for your immediate attention to this matter.

Q When you sent Plaintiff's Exhibit 12, did you include another copy of your bank statement from Redstone?

18 A I did.

11:40:08

11:40:24 10

11:40:36 15

11:40:50 20

11

12

13

14

16

17

19

21

Q And do you recall how you actually mailed Plaintiff's Exhibit 12?

A I think I overnighted this.

22 Q And if you will, look at Plaintiff's

23 Exhibit 6.

24 A Okay.

11:41:10 25 Q Can you tell us what Plaintiff's Exhibit 6

## CHERYL K. POWELL, CCR, RPR, FCRR

is? This is the receipt from the overnight Α that I sent to Midland. That cost you \$17.50? It did. Α 11:41:24 Why did you overnight your dispute to Midland? Because I actually spoke with them at this time. I called in Midland. And I told them that I needed that off because I found a house. It 11:41:34 10 11 was March. I was trying to get my house with Platinum Mortgage. And I needed this to come off 12 my account. And I told them that I -- that it 13 was paid. They told me to send a copy of my bank 14 statement. So I overnighted that to them. And 11:41:54 15 16 they received it. I called them the next day and asked them did they receive it. They received 17 it. 18 And why were you choosing Platinum to get 19 11:42:06 20 your mortgage with? Because they were the only ones working 21 22 with me because I could show them my bank 23 statement and they would understand that it was paid. 24 11:42:18 25 Q Platinum was actually trying to work with

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you?
                 It was. They were.
                 In March of '09, you actually contacted
         Midland prior to mailing your overnight letter?
                 In when?
11:42:30
                 When did you contact Midland with respect
         to your overnight letter?
                         THE COURT: He's already testified
         he contacted them by phone before the letter.
11:42:40 10
                 I did. I contacted them the day before I
     11
         sent the letter.
     12
         BY MS. CAULEY:
                 Did you contact them any other times after
     13
         you had sent the dispute letter in March of 2009?
     14
                I didn't.
11:42:50 15
         Α
                 At the time you spoke with the Midland
     16
     17
         representative, did the Midland representative
         request any other documentation from you?
     18
     19
                 No. They told me to send my bank
11:43:02 20
         statement. That's why I overnighted my bank
         statement to them.
     21
     22
                 At the same time that you sent this
     23
         dispute letter in with Midland, did you send
     24
         dispute letters to the credit reporting agencies?
11:43:10 25
         A I did.
```

And I believe the first one to Equifax is Q Plaintiff's Exhibit 39. Α Okay. Can you read what you wrote to Equifax on March 10th, 2009, please? 11:43:38 To whom it may concern, please immediately correct the dispute information on Page 17 of my credit report under Midland Credit Management, Incorporation collecting for the original 11:43:54 10 creditor, Dell Financial Services. I do not owe this debt. And it should be listed as a zero 11 balance. 12 I have been disputing this for a long time 13 without success. I have enclosed a copy of the 14 11:44:08 15 previous letter I have sent to you on this. Please immediately correct this to show a 16 17 zero balance and that I do not owe anything and delete any negative comments information on this. 18 Again, I paid this debt in full on 19 11:44:22 20 November the 8th, 2004. I have enclosed a copy 21 of my bank statement, showing a payment to Dell 22 Financial. I am sending a copy of this by 23 certified mail return receipt requested to both 24 Midland Credit Management, Incorporation and Dell 11:44:42 25 Financial Service to also request their immediate

CHERYL K. POWELL, CCR, RPR, FCRR

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attention.
                 Did you mail a copy of your Equifax letter
         to Midland?
                 I did. No. What's that?
                 I'm sorry. You indicated in the letter of
11:44:56
         March 10th, 2009, to Equifax that you were
         sending a copy to Midland?
                Yes.
         Α
                 Did you actually mail a copy to Midland?
11:45:04 10
                 I did.
     11
                 What response did you receive from Equifax
         to your dispute letter of March 10th, 2009?
     12
                 That it was -- I don't think they took it
     13
         off right then. Because they reported it as
     14
         collection account.
11:45:28 15
                 So in 2009 when you got your response back
     16
     17
         to Equifax, was Equifax reporting it with a
         balance at that time?
     18
     19
                It was a balance then. They returned the
11:45:40 20
         balance.
     21
                 If you'll turn to Plaintiff's Exhibit 52.
     22
                 Okay.
         Α
     23
                 Is this a copy of the letter you sent to
     24
         Transunion?
11:46:24 25
         A This is.
```

```
Is it basically the same letter that you
         read that you had mailed to Equifax?
                 It is.
         Α
                 And did you receive any type of response
         from Transunion to your letter of March 10th,
11:46:34
         2009?
         Α
                 That it was still a collection account.
                 Did you also send a letter to Experian?
                 I did.
         Α
11:46:44 10
                 And did you receive any response from
     11
         Experian?
                 That it was a collection account.
     12
         Α
                 In July of 2008 when you were preparing
     13
         your dispute letters and making copies of your
     14
         credit reports and everything, can you give us
11:46:58 15
         your best judgment as to how much time you spent
     16
     17
         preparing your dispute letters in July of 2008?
                         THE COURT: Eight?
     18
                         MS. CAULEY: Eight.
     19
11:47:12 20
         Α
                 In 2008, I had spent time researching
         the -- to draft a template for the disputes.
     21
     22
         then I -- I had to drive to my office, actually,
     23
         to print the documents off because the printer at
     24
         my office could print front and back side,
11:47:36 25
         two-sided page. And let's see. And I had to
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mail -- go to the post office. So total in 2008,
         I'd say about ten hours doing all of that.
         BY MS. CAULEY:
                 And in March of 2009 when you sent your
         dispute letters to Midland and the credit
11:47:52
         reporting agencies, can you give us your best
         judgment as to how much time you spent then
         creating these dispute letters?
                 I spent a little less time on researching
11:48:04 10
         the letters. So I used those as a template. So
     11
         I think it took about six hours, maybe.
                 And what do you earn an hour?
     12
         Q
                 $17 at the time.
     13
                 In 2009?
     14
         Q
11:48:20 15
                 Yes.
         Α
                 In 2008, as well?
     16
     17
                 Yes.
         Α
                 Now, if you'll turn to Page 57 --
     18
         Q
                          MR. LANGLEY: Exhibit 57?
     19
                          MS. CAULEY: Yes. Exhibit 57.
11:48:42 20
     21
         BY MS. CAULEY:
     22
                 If you'll turn, please, to
     23
         next-to-the-last page, it's Transunion 159.
     24
         Α
                 Okay.
11:49:08 25
         0
                 Do you see the section called regular
                         CHERYL K. POWELL, CCR, RPR, FCRR
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inquiries?
                I do.
                 And it indicates in July 28th, 2008, there
         is an inquiry from First Metropolitan Mortgage.
         Had you applied for a mortgage with First
11:49:32
         Metropolitan?
                 I did.
         Α
                 And on September 19th, 2008, there is an
         inquiry again from First Metropolitan Mortgage.
11:49:46 10
         Did you go back to First Metropolitan Mortgage
     11
         and apply again?
                Let's see. I might have. I might have
     12
         called. I might have called.
     13
                 Called by phone and applied?
     14
                 The first time, I might have called and
11:50:00 15
         then the second time I might have took them some
     16
     17
         documents, I guess, or vice versa.
                 There's also on September 19th, 2008, an
     18
         inquiry from Hometown Lenders. Did you apply for
     19
11:50:16 20
         a mortgage with Hometown Lenders?
     21
                Maybe Lending Tree. If that's Lending
     22
         Tree.
     23
                 Did you apply for a mortgage with Lending
     24
         Tree?
                I think I did.
11:50:28 25
         A
```

```
And were you granted a mortgage from First
         Metropolitan or Lending Tree?
                No.
         Α
                 There's also an application for Platinum
         in December, 2008. Did you apply for a mortgage
11:50:48
         from Platinum in December, 2008?
         Α
                I did.
                What was the result of that application?
         Α
                 I didn't get it then.
                 Did you apply for a mortgage with RBC Bank
11:50:56 10
         Q
     11
         in January of 2009?
     12
                 With RBC, not that I can recall. I don't
     13
         remember RBC.
                 There's also an inquiry from American
     14
         Express on May 14th of 2009. Did you apply for
11:51:16 15
     16
         American Express?
     17
                 I did.
         Α
                Can you tell us about that?
     18
                 I needed -- at that time, I was in
     19
11:51:26 20
         Birmingham, which I'm always in Birmingham in
                But I was trying to get a hotel room
     21
         March.
     22
         because I had a Capital One credit card. I tried
     23
         to get an increase in limit with them.
     24
         couldn't. So I tried to get an American Express
11:51:46 25
         to pay for my hotel. And I got declined.
```

```
All right. I'm going to come back to
         Capital One, but how did you apply for the
         American Express account?
                On line.
                On line? And what was the purpose of that
11:52:00
         account?
                The purpose to have the American Express?
                Yes.
         Q
                To pay for my hotel room because at the
11:52:10 10
         time, I didn't have any money to rent my hotel
     11
         for the week.
            How does that work at Yellow Book? Do you
     12
         have to pay your expenses upfront?
     13
                 I have to pay all of my expenses upfront.
     14
         And then I have two kids I have to take care of.
11:52:22 15
     16
         So they come first before a hotel room.
     17
                 In response to your application for
         American Express account, did you receive a
     18
         letter from American Express regarding that
     19
11:52:42 20
         application?
     21
                Did I receive a letter?
     22
                From American Express?
     23
                 I did. Saying that I didn't get the
         credit card. Declined.
     24
11:52:52 25
        Q At the time you applied for the American
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Express account, did you understand that they
         would look at your credit report?
                 I did.
                 Are you aware of any other reason that you
         were denied credit other than the credit report
11:53:04
         with American Express?
         Α
                 No.
                 If you will, look at Plaintiff's Exhibit
         7, Mr. Brim.
                 Which one?
11:53:40 10
     11
                 Seven. If you will go to Page 3, it is
         the actual document from American Express.
     12
     13
         Α
                Okay.
     14
                 Do you see that?
11:53:54 15
                 I do.
         Α
                 And how did you feel when you got this
     16
     17
         letter from American Express?
                 I was kind of saddened, because I did need
     18
         that money at the time. I think my Capital
     19
11:54:12 20
         One -- I had reached the limit. So I needed --
         and I needed to stay another week. Maybe a
     21
     22
         couple of weeks, really, before I got my
     23
         expenses. Because that's in -- well, that's in
     24
         March. It's -- the way our expense reports come,
11:54:32 25
         it depends on the time and manner we get them to
```

```
the senior manager when we get our money back.
         So at that time, I really needed that money.
                 What did you have to do in order to pay
         for your hotel room?
                 Had to borrow money from my mom, which
11:54:44
         was --
                 How did that make you feel?
      8
                 That was rough, because I am a grown man,
         and I had to depend on my mother.
                 If you look at Plaintiff's Exhibit 7, that
11:54:54 10
     11
         American Express letter, and come down to the
     12
         second paragraph?
     13
                 Okay.
                 What were the four reasons that American
     14
         Express provided to you for your denial?
11:55:10 15
     16
                         MR. LANGLEY: Your Honor, I
     17
         object. That calls for a mischaracterization of
         the document. There's one reason stated in the
     18
     19
         letter.
11:55:34 20
                         MS. CAULEY: Your Honor, there are
     21
         four --
     22
                         THE COURT: Hang on just a second.
     23
         Overruled.
     24
         BY MS. CAULEY:
11:55:46 25
         0
                 What were the four items listed in the
```

```
American Express letter for your credit denial?
                 Serious delinquency and public record or
         collection file, time since derogatory or public
         record or collection is too short, time since
         delinquency is too recent or unknown, too many
11:56:06
         inquiries last 12 months.
                And on the next page, it tells us American
         Express looked at all three of your credit
         reports. Do you see that?
11:56:22 10
                 Yes.
     11
                 In May of 2009, did you have any other
         collection account on your credit report other
     12
         than the Midland account?
     1.3
                 In '09, I don't think so.
     14
                 Since March of '09, have you sent in any
11:56:40 15
         further disputes to Midland in the mail?
     16
     17
                 I have not.
                 And have you disputed with the credit
     18
         reporting agencies any further since March of
     19
11:56:56 20
         '09?
                I have not.
     21
     22
                 Is there some reason that you didn't
     23
         continue to dispute the Midland account on your
     24
         credit reports?
11:57:02 25
         A
                Because I obviously wasn't getting
```

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anywhere with the disputes. It just wasn't
          working.
                 Since March of '09 when you sent your
          letter to Midland, have you received any letter
          from Midland, indicating they needed any other
11:57:18
          documentation in order to correct this account?
          Α
                N \circ .
                          THE COURT: Are you at a good
          stopping point?
11:57:42 10
                          MS. CAULEY: I am. I can stop.
     11
                          THE COURT: Let's stop for lunch.
                 Ladies and gentlemen, please observe the
     12
     13
          instruction I've given you. And please be back
          in one hour and 15 minutes. Thank you.
     14
11:57:54 15
                          (Jury excused.)
                          THE COURT: Thank you. You take a
     16
     17
         break, too.
     18
                          THE WITNESS: Thank you.
     19
                          (Witness steps down.)
11:58:04 20
                          (Luncheon recess.)
     21
                          (In open court. Jury not
     22
          present.)
     23
                          THE COURT: Do you have more than
     24
          one witness?
13:20:12 25
                          MR. LANGLEY: Yes, we do.
                         CHERYL K. POWELL, CCR, RPR, FCRR
                         Federal Official Court Reporter
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THE COURT: Who do you have
         besides Dell?
                         MR. LANGLEY: We will have Dell,
         Mr. Edrozo.
                         THE COURT: You're going to call
         him back?
                         MR. LANGLEY: Very briefly just
         for about four points.
                         THE COURT: Okay.
                         MR. LANGLEY: Then we'll have
13:20:20 10
     11
         Redstone Federal Credit Union.
                         THE COURT: Live?
     12
                         MR. LANGLEY: Live.
     13
                         THE COURT: Okay. I want to have
     14
13:20:34 15
         a charge conference today since you've gotten a
         copy of it. You know, I charge the jury before
     16
     17
         argument. I was hoping I could do it tonight
         before I leave. If I can't, I want to at least
     18
         have it ready to go. Because we need to make 12
     19
13:20:46 20
         copies. And it takes time. All right?
     21
                Are you going to have the lady from
     22
         Redstone Federal Credit Union that said she
     23
         didn't know that was a transactional detail
     24
         report?
13:21:00 25
                         MR. LANGLEY: Jason, what's your
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gentleman's name?
                         THE COURT: Oh.
                                           That was a lady.
                         THE WITNESS: It was a lady.
                         MR. LANGLEY: No. Someone from
         the ACH department at Redstone Federal Credit
13:21:10
         Union.
                         MR. BENNETT: I've offered a
         stipulation. Whatever it is they were going to
         say, I'm sure we will stipulate to it.
13:21:20 10
                         MR. LANGLEY: I'm pretty sure they
     11
         would not stipulate to what the witness is going
     12
         to say.
                         THE COURT: What's the witness
     13
     14
         going to say?
                         MR. LANGLEY: Jason?
13:21:26 15
                         MR. TOMPKINS: That had Mr. Brim
     16
     17
         requested a transactional detail report, he would
         have been provided with the ACH report that was
     18
         ultimately obtained in August, 2010.
     19
13:21:42 20
                 Had he advised that Dell said the bank
         statement was not sufficient proof, he would have
     21
     22
         been supplied with that same report.
     23
                         THE COURT: Okav.
     24
                         MR. BENNETT: I mean, we can
13:21:52 25
         stipulate that their witness would --
```

THE COURT: That that's what that witness would say? MR. BENNETT: Would say. THE COURT: I don't know why you wouldn't. He didn't talk to that witness. 13:22:00 talked to another witness at Redstone Federal Credit Union who said, this is the transactional detail report. MR. TOMPKINS: He will also 13:22:10 10 testify that had Midland --11 THE COURT: That that person has been fired? 12 MR. TOMPKINS: I don't know about 13 14 that. He may. But he will also testify that had 13:22:18 15 Midland contacted Redstone to try to determine 16 either that the bank statement was legitimate or to confirm that transaction, that Redstone would 17 not have talked to Midland at all. Would not 18 give Midland any information whatsoever. 19 13:22:38 20 MR. BENNETT: We don't have --21 THE COURT: He will also testify 22 that had Midland contacted Redstone -- had 23 Midland contacted Redstone to try to determine 24 either that the bank statement was legitimate or to confirm that transaction --13:22:54 25

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MR. TOMPKINS: Mr. Bennett had
         argued Midland should have contacted Redstone as
         part of the investigation.
                         THE COURT:
                                      Okay. I'm not ruling
         on objections in advance. We'll see what
13:23:04
         happens.
                         MS. CAULEY: I shouldn't be much
         longer.
                         THE COURT: Are you calling them
13:23:16 10
         here for this afternoon? They better be here
     11
         this afternoon.
     12
                         MR. TOMPKINS: Okay.
                         MR. LANGLEY: Go call them.
     13
                         THE COURT: We just have Mr. Brim
     14
         left, right?
13:23:24 15
                         MS. CAULEY: I have probably less
     16
     17
         than 30 minutes.
                         THE COURT: Then you have cross?
     18
     19
                         MR. LANGLEY: Yes.
13:23:30 20
                         THE COURT: And are you going to
         read Dell's deposition today?
     21
     22
                         MR. LANGLEY: We're going to play
     23
         Dell's deposition today, yes.
     24
                         THE COURT: And that's how long?
13:23:38 25
                         MR. LANGLEY: An hour and five
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minutes.
                         THE COURT: And then you're going
         to call Edrozo today?
                         MR. LANGLEY: Very briefly.
                         THE COURT: We might need that man
13:23:50
         here today. We might.
                         MR. LANGLEY: Jason is going to
         call him.
                         THE COURT: Tell him to be here by
13:23:58 10
         3:30. Tell him to be here by 3:30.
     11
                         MR. LANGLEY: And what we can do,
         Your Honor, if he's going to be here, then we may
     12
         go ahead and put him up this afternoon before
     13
         Mr. Edrozo.
     14
13:24:12 15
                         THE COURT: I say the latest by
         3:30.
     16
     17
                         MR. TOMPKINS: I think he has a
         two-hour drive.
     18
                         THE COURT: From Huntsville? No.
     19
13:24:22 20
         That's not two hours, I can assure you. I drive
         there all the time.
     21
     22
                         MR. TOMPKINS: He may not be in
     23
         Huntsville today.
     24
                         THE COURT: Well, tell him to get
13:24:30 25
        on the road.
```

(Discussion off the record.) (In open court. Jury present.) (Witness resumes stand.) THE COURT: Okay. Let the record show the jury is back after lunch. The parties 13:25:30 are here. Mr. Brim is back on the stand. And you may continue. MS. CAULEY: Thank you, Your Honor. We are going to try to expedite things 13:25:40 10 just a little bit. We won't go through anything 11 we've already covered, certainly, and we'll try to eliminate some of the duplicates. 12 13 BY MS. CAULEY: Mr. Brim, you mentioned before we left for 14 13:25:48 15 lunch and we were talking about your American 16 Express denial -- do you remember that? 17 Correct. Other than the mortgages we've already 18 talked about and the American Express denial, did 19 13:25:58 20 you have any other credit denials during this time between July, 2008, and the present? 21 22 Yes. I tried to get an increase with 23 Capital One. 24 At the time do you recall when you 13:26:18 25 requested a credit limit increase with Capital

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One?
               Once in 2008 because I needed that for
         tuition. I also go to Athens State University on
         line. So I pay for my tuition. So I needed it
         to pay tuition for that.
13:26:32
                 Were you approved for the Capital One
         credit limit increase?
                 I was not.
         Α
                 And was there another Capital One request
         for a limit increase?
13:26:42 10
     11
                 It was.
         Α
                 And when was that second one?
     12
                 That was in 2009.
     13
     14
                 And were you approved for that credit
13:26:50 15
         limit increase?
     16
                 I was not.
     17
                 Was there a reason that you requested the
         credit limit increase from Capital One at the
     18
         time that you -- other than the paying the
     19
13:26:58 20
         tuition?
                In 2009?
     21
     22
                 Yes, sir.
     23
                 I needed that for -- I was in March in
         Birmingham. I'm sorry. At the hotel, trying to
     24
13:27:08 25
         pay for the hotel.
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```
Was that request from Capital One at about
         Q
         the same time as the American Express?
                 It was.
         Α
                 I want to clarify for the jury in March of
         2009, were you actually able to buy your home?
13:27:22
                 I was.
         Α
                 And who was the mortgage company that --
         Α
                 With Platinum Mortgage.
         Q
                 What did you have to do, if anything, with
13:27:32 10
         Platinum Mortgage to get that mortgage approved?
     11
                 I had to -- I showed the guy where I was
     12
         disputing it. I showed him my dispute letters
         with the credit bureau with Midland. And I also
     13
     14
         showed him my bank statement.
13:27:48 15
                 Was Platinum Mortgage just able to
     16
         disregard the Midland account so you could be
     17
         approved?
                 They were. He had to talk to his boss and
     18
         show him all the information. And then --
     19
13:28:00 20
                         THE COURT: And then did they
     21
         approve it?
     22
                         THE WITNESS: They approved it.
     23
                         THE COURT: Okay.
     24
         BY MS. CAULEY:
13:28:08 25
         0
                 Mr. Brim, if you will, turn to Plaintiff's
```

```
Exhibit 3, please.
         Α
                Yes.
                After this lawsuit was filed -- and I
         don't want you to go into anything that your
         lawyers may have told you. But after this
13:28:32
         lawsuit was filed, did you ever go back to
         Redstone Federal Credit Union?
            I did.
         Α
                And when you went back to Redstone Federal
13:28:40 10
         Credit Union, what did you request?
     11
                 I went in there to -- and I asked them to
     12
         specifically trace where this money went. And I
     13
         pointed out that money on that statement.
     14
                And at the time that you were at Redstone
         Federal Credit Union, were they able just to
13:28:56 15
         provide you a document right then?
     16
     17
                No, they weren't. They told me that they
         had to do research on this. And I -- that the
     18
         manager had to do it. And she would call me back
     19
13:29:08 20
         when she had it. And they called me a week
         later.
     21
     22
                Is Plaintiff's Exhibit 3 the document that
     23
         you were able to go and pick up from Redstone
         Federal Credit Union?
     24
13:29:18 25
        A This is.
```

I'm going to talk just a little bit about your damages. Can you tell us how the Midland account being on your credit report and you being denied credit has affected you? 13:29:46 It added a lot of stress on me. Especially in -- at the times I was trying to get a house, which is 2008. Basically 2008 through 2009 until March until I finally got my house. 13:30:04 10 It was, like, loss of sleep because worrying 11 about trying to get a loan to get a house -- I 12 mean, if you all have tried to get a house, basically, that's trying -- that's a headache in 13 14 itself, trying to get a house. So when I couldn't get a loan to get a house, that was a 13:30:20 15 headache in itself. 16 17 So it caused a lot of anxiety on me which prevented me from sleeping some nights. So I 18 would take Nyquil basically to kind of relax me 19 13:30:36 20 and help me sleep. 21 How often was the stress affecting your 22 ability to sleep? Oh, out of a month, I would say at least 23 24 one week, maybe. 13:30:48 25 Q So it would be more than a couple of times

CHERYL K. POWELL, CCR, RPR, FCRR

```
a week?
                 It would. I would say a week straight.
         Because on top of -- I mean, I have a lot of
         work, work with my job. Not only worrying about
         trying to get a house, trying to get my credit
13:31:04
         cleared. And school. It was a lot on my plate.
         So it was -- I mean, it was hectic.
                Other than the -- it affecting your sleep,
         did the stress have any other impact on you
13:31:18 10
         physically?
     11
                 Physically, I just had headaches,
         basically. A lot of headaches.
     12
     13
                 Were you taking any medications or over
         the counter --
     14
                I took BC.
13:31:28 15
         Α
                BC?
     16
     17
                BC.
                And is that a headache medicine?
     18
         Q
                 That is a headache medicine.
     19
         Α
13:31:36 20
         Q
                 How often in a given month would you take
         BC for your headaches?
     21
     22
                 I would at least take that seven days out
     23
         of the week. BC. Because it -- lack of rest and
     24
         my workload. So I had headaches. So I would
13:31:50 25
         take the BC to kind of ease the pain.
```

 ${\it CHERYL~K.~POWELL},~{\it CCR},~{\it RPR},~{\it FCRR}$ 

```
Did the Midland account being on your
         credit report ever affect your ability to focus
         or actually do your job?
                 It did. Because I wanted to get it
         cleared.
13:32:06
               Can you tell us in your best judgment from
         July, 2008, when you first started disputing with
         the credit reporting agencies up until today a
         total amount of time that you have expended in
13:32:34 10
         correcting your credit report?
     11
                 That is quite a bit of time put in.
         Finding documents, going to deposition, court,
     12
         mediation, today. Court. I mean, I had to
     13
         take -- I only get two weeks of vacation out of
     14
         the year. I'm taking one now. One week this
13:33:04 15
                 I'd say easily a month. Easily.
     16
     17
                 A month of time, total?
         0
                 A month of time.
     18
         Α
                 And are you still making 17.50 an hour?
     19
13:33:20 20
         Α
                 I am making a little bit more now.
                 What do you make now?
     21
         0
     22
                 I make at least $22 an hour.
         Α
     23
                 When did that change occur?
         0
     24
         Α
                 It was right after I bought my house.
13:33:34 25
         0
                 So spring of 2009?
```

```
Α
                 Yes.
                          (Discussion off the record.)
                         MS. CAULEY: Your Honor, that's
         all the questions I have at this time.
                         THE COURT: Okay.
13:33:52
                           CROSS-EXAMINATION
         BY MR. LANGLEY:
                 Mr. Brim, good afternoon.
         Α
                 Good afternoon.
                 You are aware that this Midland account
13:33:58 10
     11
         was deleted from your credit reports in September
         of 2010?
     12
     13
                 September, yes. 2010.
     14
                 And so any stress that you felt as a
13:34:12 15
         result of the reporting would have been gone by
         September, 2010, correct?
     16
     17
                 By September of '10? I didn't realize it
         then because I didn't look at my credit report in
     18
         September.
     19
13:34:22 20
                 You weren't told in September of 2010 that
         this had been deleted?
     21
     22
                 September, '10? I don't think around that
         time -- I wasn't really speaking with anyone.
     23
                 Well, Mr. Brim, you remember when
     24
13:34:34 25
         Mr. Tompkins took your deposition in October of
```

```
2010, don't you?
                 Uh-huh (indicating yes).
         Α
                 You remember meeting him in deposition?
                 I do.
                 And at that time, Mr. Brim, you were aware
13:34:40
         that the item had been deleted from your credit
         reports, weren't you?
      8
                 I think I found out that day, actually.
         Α
         That is true. I found out that day.
13:34:52 10
                 Was it actually Mr. Tompkins that told you
     11
         that it had been deleted?
                 No. It was not. It was not.
     12
     13
                 Mr. Brim, if I understood you correctly,
     14
         you were attributing your stress during this
         July, 2008, through at some point in 2009 time
13:35:08 15
         frame to your inability to get a home mortgage.
     16
     17
         Did I hear you correctly?
     18
         Α
                Correct.
                 And to make sure that I'm perfectly clear
     19
13:35:22 20
         about where you applied for a mortgage, I want to
     21
         name off what I heard. And you tell me if I've
     22
         missed something. First Metropolitan?
     23
                 Correct.
         Α
     24
                 Lending Tree?
13:35:32 25
         Α
                 Correct.
```

```
Platinum Mortgage?
         Q
                 Correct. I think it was one more.
         Α
                 Was it RBC Bank?
         Q
                 No.
         Α
                 Do you remember what the other one was?
13:35:40
         Q
                 I do not.
         Α
                 So right now, the only three that you
         remember are First Metropolitan, Lending Tree,
         and Platinum Mortgage?
13:35:50 10
                 Correct.
     11
                 And you actually got a mortgage in March
         or April, 2009, from Platinum Mortgage, didn't
     12
     13
         you?
                March.
     14
         Α
13:35:56 15
                 So your stress associated with wondering
     16
         whether or not you were going to get a home
     17
         mortgage would have ended in March or April,
         2009?
     18
     19
                 That's not correct. Because it was still
13:36:06 20
         on my credit.
     21
                But the stress associated with worrying
     22
         about whether you were going to get a home
     23
         mortgage would have ended in March or April,
         2009?
     24
13:36:14 25
         A My home, yes. But my credit, no.
```

```
I understand that. What I was asking
         about is your home mortgage. All right. First
         met --
                         THE COURT: Wait. Was that a
         question?
13:36:26
                         MR. LANGLEY: No. It wasn't.
         I'll withdraw it, then.
                         THE COURT: Okay.
         BY MR. LANGLEY:
                 Mr. Brim, did you apply for a mortgage
13:36:30 10
     11
         with First Metropolitan?
                I think I did.
     12
                 You think you did?
     13
                 I think I did.
     14
         Α
                 Do you know when you think you applied for
13:36:40 15
     16
         a mortgage with First Metropolitan?
     17
                 I do not remember.
         Α
                 Do you even remember the year?
     18
         Q
     19
                I did not.
         Α
13:36:48 20
                 Could have been 2007?
     21
                 I don't think so.
         Α
     22
                 Do you remember speaking with anyone from
     23
         First Metropolitan?
     24
                I think it was a guy by the name of John,
13:37:00 25
        I think it was.
```

```
Do you remember a last name?
         Q
         Α
                 I do not.
                 Do you have any communication with him in
         writing?
                 In writing? I don't think so.
13:37:06
         Α
                 Was this all over the telephone?
         Α
                 I think it was.
                 And you don't remember when this was?
                 I do not.
         Α
13:37:14 10
                 Do you ever remember getting a denial
     11
         letter from First Metropolitan?
                 I don't think so.
     12
                 Do you remember ever being told that you
     13
         were denied a loan from First Metropolitan?
     14
13:37:30 15
                 At that time, I cannot remember, but I
     16
         didn't get the loan.
     17
                 If I understood you correctly just a
         second ago, you weren't even sure you had
     18
         actually applied for a loan with First
     19
13:37:50 20
         Metropolitan?
                 I think I just said I did.
     21
     22
                 I thought you said that you weren't sure
     23
         whether you did or not.
                 Then I said I think I did.
     24
         Α
13:37:56 25
         0
                 You think you applied for a loan with
```

```
First Metropolitan?
                 Uh-huh (indicating yes).
                 But you don't have any documents,
         evidencing the fact that you applied for a loan,
         do you?
13:38:02
                 I don't.
                 You don't have any documents, evidencing
         the fact that they denied you a loan?
                 I don't.
         Α
13:38:10 10
                 All right. Then the second one you
     11
         mentioned was Lending Tree. Did you apply for a
         loan with Lending Tree?
     12
                 I did.
     13
         Α
                 When was that?
     14
13:38:16 15
                 I do not remember.
         Α
                 Do you remember speaking to anyone?
     16
     17
                 That was on line.
                 That was on line. So there would have
     18
         been written communications regarding that
     19
13:38:26 20
         application?
     21
                 Correct.
         Α
     22
                 And do you still have those?
     23
                 I didn't print it out.
     24
         Q
                 Are they still available on your computer?
13:38:34 25
                 No. They're not. That computer is broke
         Α
```

```
down. The motherboard went bad on it.
                 When did the motherboard go bad on your
          computer?
                 I do not remember. I've had four
          computers since.
13:38:50
                          THE COURT: Since 2004?
                          THE WITNESS: At least four. Two
          laptops.
                          THE COURT: Since 2004?
                          THE WITNESS: Since 2004.
13:39:00 10
     11
                          THE COURT: Okay.
     12
          BY MR. LANGLEY:
     13
                 Do you remember what year it was that the
         motherboard --
     14
13:39:08 15
                I do not.
         Α
                 -- went down? But presumably, whenever
     16
     17
          your motherboard went down, you wouldn't be able
          to retrieve any other emails from that time
     18
         period, would you?
     19
13:39:20 20
         Α
                 N \circ .
                 Did anyone from Lending Tree or First
     21
     22
         Metropolitan ever tell you that the reason you
     23
          didn't get a mortgage --
     24
          Α
                 No.
13:39:34 25
                 -- was because of Midland?
         0
                         CHERYL K. POWELL, CCR, RPR, FCRR
```

```
Α
                 No.
         0
                 And in March or April, 2009, you did get a
         mortgage from Platinum Mortgage, right?
                 In March, 2009? I did.
                 Yes, sir. All right. Have we covered all
13:39:46
         of the entities to whom you applied for a
         mortgage?
                 I'd say we did.
         Q
                 You also mentioned that you were denied
13:39:58 10
         credit by American Express?
     11
                 Correct.
         Α
                 And that was in May of 2009?
     12
         Q
     13
                 Correct.
                 Mr. Brim, were you seeking to obtain that
     14
         card for business purposes?
13:40:06 15
     16
                 Correct.
     17
                 And that was not going to be a personal
         credit card, was it?
     18
     19
         Α
                 No.
13:40:16 20
                          THE COURT: Would it not be issued
     21
         to you?
     22
                          THE WITNESS: It would be issued
     23
         to me. So I guess that would be my personal
     24
         card.
13:40:22 25
                          THE COURT: I mean, well, let me
```

```
just ask you this: Does Yellow Book furnish you
         with a credit card?
                         THE WITNESS: Oh, no. No, ma'am.
                         THE COURT: So --
                         THE WITNESS: I pay for everything
13:40:30
         in advance. And then we submit expense reports.
         And then we get our money back.
                         THE COURT: But you don't have a
         card from Capital One, or anyone else for that
13:40:42 10
         matter, that says this is for business only?
     11
                         THE WITNESS: No.
                         THE COURT: Okay.
     12
     13
         BY MR. LANGLEY:
     14
                 Mr. Brim, your purpose in obtaining the
13:40:48 15
         American Express was for business expenses?
     16
                 Yes.
     17
                 And your transaction with American Express
         was completely on line, correct?
     18
                 It was.
     19
         Α
13:40:56 20
         Q
                 You never talked with anyone from American
     21
         Express about this, did you?
     22
         Α
                 No.
     23
                 And if you would, please, turn to
         Plaintiff's Exhibit 7.
     24
13:41:16 25
         A
               Okay.
```

```
Mr. Brim, is Plaintiff's Exhibit 7 the
         Q
         only correspondence or writing you received from
         American Express?
                Wait. Seven?
         0
                Yes.
13:41:30
                 Which page?
         Α
                 I'm actually looking at the first page of
         Plaintiff's Exhibit 7. It's the beginning of the
         letter from American Express.
13:41:48 10
                         MS. CAULEY: Mr. Brim, it's
     11
         actually in the black notebook. Not the white
         notebook.
     12
     13
                         THE WITNESS: Oh, okay. All
     14
         right. Okay.
13:42:00 15
         BY MR. LANGLEY:
                 Let me ask my question again. Is this the
     16
     17
         only letter or writing of any sort that you
         received from American Express?
     18
                It is.
     19
         Α
13:42:10 20
                 And this letter doesn't mention Midland
         Credit Management anywhere in it, does it?
     21
     22
                 It doesn't. But that was the only thing
     23
         on my credit.
     24
                Mr. Brim, would you please read for me the
13:42:28 25
        first paragraph of the letter? Right underneath
```

```
Dear Jamon T. Brim.
                 Thank you for your recent application for
         Blue Sky for American Express. After reviewing
         your request, regrettably, we were unable to open
         an account for you at this time for the following
13:42:38
         reasons.
                 And it actually has the S inside
         parentheticals, doesn't it?
         Α
                 Yes.
13:42:46 10
                 What does it state, Mr. Brim, as the
     11
         reason that your credit card with American
     12
         Express was denied?
                All four?
     13
     14
                 Well, Mr. Brim, look at the first line of
13:42:58 15
         the second paragraph.
                 Of the second -- consumer credit bureau
     16
     17
         score from Transunion is too low.
                 And Mr. Brim, you understand that the
     18
         sentence that follows is explaining why the
     19
13:43:12 20
         credit score may have been too low, correct?
                         MS. CAULEY: Object to the form,
     21
     22
         Your Honor. And calls for speculation by this
     23
         witness.
     24
                         THE COURT: Overruled. How did
13:43:24 25
         you read it to mean?
```

THE WITNESS: Read this -- the second sentence? THE COURT: No. How do you understand where it says see below? Do you see the place where it says see below? 13:43:36 THE WITNESS: Yes. THE COURT: Below that, there's a sentence and four other sentences. What did you understand them to mean? 13:43:48 10 THE WITNESS: That my credit score 11 was low. 12 BY MR. LANGLEY: 13 So Mr. Brim, you understood that American Express was denying your credit card because your 14 13:43:58 15 Transunion score was too low, correct? 16 Correct. 17 And that the reasons they listed beneath 18 were the reasons that your credit score with Transunion may have been too low? 19 13:44:08 20 Α Correct. 21 All right. Capital One -- you actually 22 had a credit card with Capital One, didn't you? 23 Yes. 24 And if I understood your testimony 13:44:20 25 correctly earlier, you applied in 2008 and again

CHERYL K. POWELL, CCR, RPR, FCRR

```
in 2009 for an increase?
         Α
                 Correct.
                 On your credit limit. Are you sure that
         that first one was in 2008?
                 I think it was.
         Α
13:44:32
                 Do you know for sure?
                 I do not until I maybe look at the credit
         report.
                 Well, why don't we start by looking at
13:44:44 10
         Plaintiff's Exhibit 44? And if you would,
     11
         please, look at the page that has the number in
         the bottom TU85.
     12
     13
                 Okay.
     14
                 In the bottom, left corner, you see that
         entry for Capital One?
13:45:16 15
     16
                 Yes.
                 You see that date there of 9-25, 2007?
     17
     18
         Α
                 Correct.
     19
                 Do you think it was actually September of
13:45:22 20
         2007 when you made that first --
     21
                 Maybe could have been.
         Α
     22
                 Could have been. And Mr. Brim, your
     23
         second application for increase from Capital One
         was in 2009, correct?
     24
13:45:34 25
         A
                 Okay.
```

```
Is that correct?
         Q
         Α
                 Correct.
                 Did you actually speak to someone from
         Capital One at that time?
                 I did.
13:45:48
                 They didn't tell you anything about your
         denial being related to Midland Credit
         Management, did they?
         Α
                 They didn't.
13:45:58 10
         Q
                 Excuse me?
     11
                 They didn't.
         Α
                 They did not?
     12
         Q
                 Did not.
     13
                 So you don't know why they denied it?
     14
13:46:06 15
         Α
                 No.
                 So you can't say that it was because of
     16
     17
         Midland Credit Management?
     18
         Α
                 No.
     19
                 Earlier, your lawyer had asked you some
13:46:18 20
         questions or asked you a question -- and I think
         I heard it correctly. It went something like the
     21
     22
         only adverse account on your report at the time
     23
         of these applications was the Midland Credit
     24
         Management item. Did I hear that correctly?
13:46:34 25
         A Maybe.
```

```
Well, let me ask you this question:
                                                        Αt
         the time you were making these applications for
         mortgages and your application to American
         Express and for an increase in limits from
         Capital One, there were other negative items on
13:46:46
         your credit report, weren't there?
                 I'd have to look to see.
                 Okay. Let's do that. Let's start with
         Plaintiff's Exhibit 37.
13:47:00 10
                 Okay.
         Α
     11
                 And if you would, start with the document
         that has the Number 52 at the bottom.
     12
     13
         Α
                Okay.
     14
                 And this is a page from an Equifax report,
13:47:32 15
         dated July 28th, 2008, correct?
     16
                 Correct.
     17
                 All right. On Page 52 under negative
         accounts, we see that there's one from Alabama
     18
         A & M University, correct?
     19
13:47:44 20
         Α
                Correct.
     21
                 And then if we flip the page, we see that
     22
         there's one from G.E.M.B. Sam's?
                Correct. That is. That was zero balance.
     23
     24
         And Alabama A & M, I was attending school, that
         should have been deferred with the other two.
13:48:04 25
```

```
I understand. I'm just asking about what
          Q
          was on the credit report at the time.
                 Oh, it does, with the zero balance.
          Α
                 That's under the negative accounts?
          0
                 It is.
          Α
13:48:12
                 And then the third one is the Midland
          Credit Management account?
                 Correct.
          Α
          Q
                 So that was Equifax in July of 2008?
13:48:18 10
                 Correct. With the 1,600, correct.
          Α
     11
                 Let's look at Plaintiff's Exhibit 43.
          Q
     12
          Α
                 Okay.
                 And specifically, let's go to Page 71 of
     13
         that exhibit. The document bears the number, 71.
     14
13:48:40 15
                 Okay.
         Α
     16
                 This is a report from Transunion, correct?
     17
                 Correct.
          Α
                 Dated same day, July 29th, 2008?
     18
          Q
     19
          Α
                 Okay.
13:48:54 20
                 And do you see where it says adverse
     21
          accounts on the page marked as TU71?
     22
                 I do.
     23
                 And on the Transunion report, we have an
     24
          adverse account from Direct Loan Service System,
13:49:08 25
         correct?
```

```
Α
                Correct.
                 And then we see the G.E.M.B. Sam's Club
         account, correct?
                 Yes. Zero balance.
                 But, Mr. Brim, it's listed under adverse
13:49:18
         accounts, isn't it?
                Yes. And I was in school for Direct Loan
         Service, as well.
                 Same thing with that one. It was still
13:49:28 10
         listed under adverse accounts?
     11
                 That's true.
                And then the last one we see is the
     12
     13
         Midland Credit Management account, correct?
                 With the 1,600 balance, correct.
     14
         Α
13:49:36 15
                 All right. Let's go now to the 2009 time
         frame. Let's look at Plaintiff's Exhibit 53.
     16
     17
         Α
                 Okay.
                 I think it's four pages in. It's the page
     18
         Q
         bearing the number, TU139.
     19
13:50:02 20
         Α
                 Bear with me. My book -- you said 54?
     21
                 53, Mr. Brim.
         0
     22
         Α
                 Okay.
     23
                         THE COURT: TU what?
                         MR. LANGLEY: 139.
     24
13:50:18 25
        A
                139. Okay.
```

```
BY MR. LANGLEY:
                 This is a Transunion report from March 18,
         2009, correct?
                Correct.
                 All right. On Page TU139, under adverse
13:50:24
         accounts, we again see Direct Loan Service
         System, G.E.M.B. Sam's Club and Midland Credit
         Management, correct?
         Α
                Correct.
                 So the same three accounts in March of
13:50:40 10
     11
         2009 are listing as adverse?
                With no balance.
     12
         Α
     13
                 But listing as adverse?
     14
         Α
                 But -- correct.
13:50:50 15
                Mr. Brim, correct?
         0
     16
                 Correct.
     17
                 Let's go to Plaintiff's Exhibit 70. And
     18
         it is, I believe, the second page of Exhibit 70,
         which is an Experian credit report, dated
     19
13:51:20 20
         February 18, 2010. Are you with me on that one?
     21
                 I'm with you.
     22
                 Then on the second page at the top left,
     23
         it says, potentially negative items or items for
     24
         further review. Do you see that?
13:51:30 25
         A
                Potentially negative -- I don't see that.
```

```
I think I'm on the right page.
                          THE COURT: On the very top line.
                          THE WITNESS: Oh. Okay. I see
         it.
         BY MR. LANGLEY:
13:51:44
                 And under potentially negative items, it
         lists, again, the Sam's Club, G.E. Money Bank and
         the Midland Credit Management account?
                Correct.
         Α
13:51:54 10
                 So during this entire period of time,
         there was at least one other adverse account on
     11
         your credit report and, for most of the time,
     12
     13
         there were two, correct?
                 Without a balance.
     14
         Α
13:52:04 15
                 But listed under negative accounts,
     16
         Mr. Brim, correct?
     17
                 Correct.
         Α
                 You're not a credit expert, are you?
     18
         Q
                 No. Never claimed to be.
     19
         Α
13:52:12 20
                 So you don't know what it is that
         creditors are looking for or why they're looking
     21
     22
         at it?
     23
                 What's that, now?
     24
                 You don't know what creditors are looking
13:52:22 25
        for or why they're looking at it when they look
```

```
at your report?
         Α
                 No.
                          THE COURT: Did you answer?
                          THE WITNESS: I did. I said no.
                         THE COURT: Okay.
13:52:32
         BY MR. LANGLEY:
                 Ms. Cauley asked you some questions about
         headaches and loss of sleep. Do you remember
         those?
13:52:44 10
                 Correct.
     11
                 Mr. Brim, you never saw a doctor for any
         of those, did you?
     12
                I didn't.
     13
                 And you never saw any other kind of health
     14
13:52:56 15
         professional for those symptoms, did you?
                 I didn't.
     16
     17
                 Never had any prescription medication for
         those?
     18
                 Prescribed? No, I didn't.
     19
13:53:06 20
                 Ms. Cauley also asked you some questions
         about collection lawsuit that Midland Funding,
     21
     22
         L.L.C. filed against you. Do you remember those
     23
         questions?
     24
         Α
                 Yes. That is a public record that's on.
13:53:22 25
         0
                 And you were never actually served with a
```

```
copy of that complaint, were you?
           I wasn't.
         Α
                And you're aware that that complaint was
         dismissed?
            But it's still public record. So you
13:53:30
         could go and see it.
                You can go and see it today?
      8
                It's public record. So, I mean, I'm
         pretty sure you can see it. It was a suit filed
13:53:42 10
         against me. You can see that.
     11
                Do you know when it was dismissed,
         Mr. Brim?
     12
              I do not.
     13
                You do know that it was dismissed, though?
     14
                It obviously had to be, because I didn't
13:53:52 15
         Α
         receive anything else about it. So I assume.
     16
     17
                You also testified earlier that you had
         received some letters both directly from Midland
     18
         and then from a law firm that was representing
     19
13:54:06 20
         Midland Funding?
     21
                I did.
         Α
     22
                Let's talk about those letters very
     23
         briefly. First, let's look at Plaintiff's
         Exhibit 10.
     24
13:54:20 25
                But before we get there, there was some
```

```
testimony earlier about a letter you may have
         received in October of 2007. Do you remember
         that testimony?
                Yes.
                 And I believe you testified that you
13:54:28
         actually sent something to Midland that was --
                I faxed a bank statement in.
                Did you retain a copy of that fax cover
         sheet?
13:54:40 10
                 The fax -- at the time, I was ignorant of
     11
         the fact that I needed to keep copies.
     12
               When was it that you started keeping
         copies?
     13
                When I started certified mail.
     14
         Α
13:54:50 15
                And the next letter that you received from
         Midland was in January of 2008, correct?
     16
     17
                Correct.
         Α
                And that's the letter that's marked as
     18
         Plaintiff's Exhibit 10. Did you receive that
     19
13:55:18 20
         one, Mr. Brim?
     21
                Wait. Wait. Wait.
     22
                I'm sorry.
     23
                 I think I have too many pages. Let's see.
     24
         Yes.
13:55:34 25
        Q But you didn't send a response to that
```

```
letter, did you?
                 I didn't.
         Α
                 Now let's look at Plaintiff's Exhibit 17.
                 Okay.
         Α
                 Did you receive this letter?
13:55:54
         Q
                 I did.
         Α
         Q
                 But you didn't respond to it, did you?
         Α
                 I was out of town, working.
                 When you got back in town, did you respond
13:56:04 10
         to it?
     11
                 I didn't.
         Α
     12
                          THE COURT: Now, you got the --
         you got that letter and the sheriff's note at the
     13
         same time?
     14
13:56:22 15
                          THE WITNESS: Yes, ma'am. When I
     16
         got home, they were on my door. I read it for a
     17
         while.
                          THE COURT: What was it the
     18
         sheriff's notice said?
     19
13:56:30 20
                          THE WITNESS: It said his card
         with his name and it said call me. So I just put
     21
     22
         two and two together.
     23
                          THE COURT: Okav.
     24
         BY MR. LANGLEY:
13:56:38 25
         0
                 Mr. Brim, that was all before you sent
```

```
your first dispute to the credit reporting
         agencies regarding the Midland account, correct?
                 That is -- when I got back home, that is
         the same time I sent my dispute.
                 So you got back home. You saw these
13:56:48
         things. And then after that, you sent your
         dispute to the credit reporting agencies?
                 Correct. And Midland.
         Δ
                 Right. And we'll get to that in a second.
         Mr. Brim, I want to go back and talk a little bit
13:57:00 10
     11
         about your Dell purchase when you purchased a
     12
         Dell computer.
     13
                 Okay.
                 And I understood you testified earlier
     14
13:57:10 15
         that you purchased that computer for purposes of
     16
         taking courses on line?
     17
                Correct.
                 And that you opened up a finance account
     18
         with Dell Financial Services to purchase it?
     19
13:57:26 20
         Α
                Correct.
                And that you paid it off via phone
     21
     22
         check --
     23
            Correct.
     24
                And that was about 30 days or shortly
13:57:34 25
        thereafter?
```

```
Correct.
         Α
                 Was this the first time that you had made
         a payment by phone check?
                 It was.
                 Was that uncomfortable?
13:57:42
                 Paying a check -- that was. I mean, I
         don't really -- didn't really want to give
         information over like that.
                 Did you ask for a confirmation number?
13:57:54 10
                 A confirmation? I just assumed that it
     11
         would take care of it. At the time, I was
         ignorant of the fact.
     12
                 You did not ask for a confirmation number?
     13
                 I did not.
     14
13:58:04 15
                 Did you ask for a receipt?
                 I thought they would just email it to me,
     16
     17
         because I asked her if she had my email at the
         time. She said yes. Would you email me a
     18
         receipt. We had that conversation.
     19
13:58:16 20
                         THE COURT: Are you talking to
     21
         Dell?
     22
                         THE WITNESS: Dell. I thought
     23
         they would email a receipt. They didn't.
     24
         BY MR. LANGLEY:
                 This was back in '04?
13:58:26 25
         0
```

```
'04.
         Α
                         THE COURT: Well, when you made
         that check by phone, did you give Dell your bank
         account number?
                         THE WITNESS: I gave them -- I
13:58:36
         don't think it was the -- I might have. But I
         had a blank check -- you know, when you start
         your account. And then it had the routing
         number. And I think it was a check number on it.
                         THE COURT: Okay.
13:58:50 10
     11
         BY MR. LANGLEY:
     12
                 Mr. Brim, shortly after you made that
     13
         payment via phone draft to Dell, you actually
         continued getting bills from Dell?
     14
                I did.
13:59:10 15
         Α
     16
                 And that's when you knew there was a
     17
         problem?
     18
         Α
                Yes.
                 And was it shortly thereafter that you
     19
13:59:20 20
         first sent a bank statement to Dell Financial
         Services?
     21
     22
                 I did.
     23
                 If you would, please, turn to Plaintiff's
         Exhibit 2. And I'm looking at the second page.
     24
13:59:52 25
         It's the statement.
```

 ${\it CHERYL~K.~POWELL},~{\it CCR},~{\it RPR},~{\it FCRR}$ 

```
Okay.
         Α
                 To be clear, this is not the copy of the
         statement that you actually sent to Dell, is it?
                 No. I circled it.
                 There was some handwriting on the copy
14:00:04
         that you sent to Dell?
         Α
                 Yes.
                 Did you just go to the bank one time to
         get a statement, and did you continue to use the
14:00:12 10
         same statement over and over?
     11
                 No. The first time, it was another
         statement that I -- another copy of a bank
     12
     13
         statement that I got from the bank.
                 Mr. Brim, would you turn to Plaintiff's
     14
         Exhibit 11, please?
14:00:24 15
     16
                 Okay.
     17
                 And this is a copy of the dispute letter
         that you sent to Midland in July of 2008,
     18
     19
         correct?
14:00:42 20
         Α
           Correct.
                 And you included a copy of your bank
     21
     22
         statement?
     23
                 Yes. Transactional detail report.
     24
                 Is the document that is behind the letter,
14:00:54 25
        is that the actual copy that you sent to Midland
```

```
to --
                 That is the transactional detail report.
                 Mr. Brim, is the underlining under
         $954.12 -- is that your handwriting?
                 That could be. That's just a line. I
14:01:06
         mean, if it was numbers or words, I could tell
         you better.
                 Okay. Well, let's look at the words
         actually at the top of the page. Do you see
14:01:18 10
         those?
     11
         Α
                I do.
                 Whose handwriting is that?
     12
                Maybe the bank. I didn't -- that's not my
     13
     14
         writing.
14:01:24 15
                 Well, it looks like something has been cut
     16
         off the top of that page. Can you tell us what
     17
         it was?
                Automated out something.
     18
         Α
     19
                 Was it automated operations? Does that
14:01:40 20
         ring a bell?
     21
                 I don't remember. I can't read it.
         Α
     22
                 The term, "automated operations," doesn't
     23
         mean anything to you as we sit here today?
                 It doesn't, because I don't --
     24
         Α
14:01:56 25
         0
                 Do you know what's written next to
```

```
automated operations?
                          THE COURT: Wait. We haven't
         established that the second word is operations.
                         MR. LANGLEY: Let's try that then.
                          THE COURT: Okay.
14:02:04
                         MR. LANGLEY: May I approach the
         witness?
                         THE COURT: Sure.
                         MR. LANGLEY: I'll show Your
14:02:20 10
         Honor.
     11
                         THE COURT: Yes.
     12
         BY MR. LANGLEY:
                 Mr. Brim, I am showing you what I have
     13
         marked as Defendant's Exhibit 24.
     14
14:02:36 15
         Α
                 Okay.
                 Is that one of the copies of the bank
     16
     17
         statements you got from Redstone Federal Credit
         Union?
     18
                 This is a copy.
     19
14:02:42 20
                 Can you now tell from the handwriting at
         the top of the page that that says automated
     21
     22
         operations?
                 It says automated. I would assume that
     23
         that's operations. I mean, you really can't see
     24
14:02:56 25
        the word. But I would assume.
```

```
Did you keep your original copy?
                Of the -- they gave me a copy just like
         this.
                Did you keep your original copy of the
         document that your --
14:03:06
                Maybe I do.
                         MR. LANGLEY: Your Honor, I'd like
         to move to admit Defendant's Exhibit 24.
                         THE COURT: Any objection?
14:03:14 10
                         MS. CAULEY: Yes, Your Honor.
     11
         Just if they're going to try and argue what the
         words are at the top since Mr. Brim has testified
     12
         he couldn't read them.
     13
                         THE COURT: Well, I'll be glad to
     14
         admit it. It's not been established that the
14:03:28 15
     16
         word is what you say it is. Okay? But it's
     17
         admitted for whatever it is.
                         JUROR 2: Your Honor, we don't
     18
     19
         have 24.
14:03:42 20
                         THE COURT: Oh. You don't have a
     21
         copy to --
     22
                         MR. LANGLEY: No. We have not put
     23
         it in. I was --
                         THE COURT: It is admitted. And
     24
14:03:46 25
        we can make -- you can make copies of it in your
```

```
break.
                          MR. LANGLEY: Okay.
                          THE COURT: Unless you're going to
         ask more questions about it at this point.
                          MR. LANGLEY: I'm going to ask
14:03:56
         just a couple more questions.
                          THE COURT: Okay. Why don't you
      8
         go make the 12 copies?
                          MR. LANGLEY: Should we take a
14:04:04 10
         short break?
     11
                          THE COURT: Yeah. We'll wait.
                          (Short recess.)
     12
                          MR. LANGLEY: Your Honor, if it's
     13
     14
         all right with the Court, I'll just come back to
14:04:34 15
         that.
                          THE COURT: Okay.
     16
         BY MR. LANGLEY:
     17
                 Mr. Brim, in the 2004, late 2004, early
     18
         2005 time frame, you were working with Dell to
     19
14:04:42 20
         try to resolve this, correct?
     21
                 Correct.
         Α
     22
                 And you sent them the bank statement at
     23
         least one time, didn't you?
     24
         Α
                Correct.
14:04:50 25
         0
                 Did you send it two times?
                         CHERYL K. POWELL, CCR, RPR, FCRR
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```
Α
                Yes.
                And that did not resolve the issue on Dell
         side, did it?
                 It didn't. It did not.
                 They continued to ask you for additional
14:05:02
         types of proof?
                 They asked -- like, in the Better Business
         Bureau complaint, they asked for a transactional
         detail report, which I went to the Madison branch
14:05:14 10
         and asked for a transactional detail report.
     11
         lady that I spoke with said, this is the
     12
         transactional detail report. And it was
     13
         basically the statement which is what it was.
         And that's what I --
     14
14:05:28 15
                 Do you remember that conversation with
     16
         Redstone pretty clearly?
     17
                 Yes, I do. That was that lady.
                         MR. LANGLEY: May I approach the
     18
     19
         witness?
14:06:04 20
                         THE COURT: Yes.
     21
         BY MR. LANGLEY:
     22
                 Mr. Brim, I'm handing you a copy of the
     23
         deposition Mr. Tompkins took of you in October of
     24
         2010. Do you remember that?
14:06:12 25
         A
                Yes.
```

```
If you would, please, turn to Page 48.
         Q
         Α
                Okay.
                 On Line 8, Mr. Tompkins asked you:
                                                      If you
         look with me on Defendant's Exhibit 6, Page 2,
         describing the responses in the Better Business
14:06:34
         Bureau, the one in the middle appears to be a
         response from you; is that correct? Answer:
         Right here? Question: Yes. Answer: Yes.
         Question: Do you see where it says the bank
14:06:52 10
         stated they did not know what a transactional
     11
         detail report was? Answer: Yes. Question:
                                                        Dο
     12
         you remember that conversation with your bank?
     1.3
         Answer: I do not.
                Did I read that correctly?
     14
                You do. But I remember now.
14:07:06 15
         Α
                You remember now. You didn't remember
     16
     17
         when Mr. Tompkins took your deposition, though?
     18
         Α
                No.
     19
                It's something that's come to you between
14:07:14 20
         October and today?
     21
                Uh-huh (indicating yes).
     22
                Let's look at Defendant's Exhibit 20.
     23
         This will be in the white binder. You can keep
     24
         that up there. We may need it.
14:07:32 25
         A
                Okay.
```

```
Defendant's Exhibit 20 is a two-page
         document that includes a cover letter from the
         Better Business Bureau and a complaint activity
         report from the Better Business Bureau, isn't it?
                 It is.
14:08:02
                 And these were records that you actually
         retained?
                Correct.
         Α
                 Going back all the way to November of
         2005?
14:08:08 10
     11
                 Correct.
         Α
                 This is when you were still trying to work
     12
         things out with Dell Financial Services?
     13
                 Correct.
     14
         Α
                 And Mr. Brim, if you would, please, look
14:08:16 15
         at the entry on October 21st, 2005. It says DSF
     16
     17
         records indicate Mr. Brim is working with Angela
         with our recovery department. It shows she is
     18
         waiting for a transactional detail report from
     19
14:08:42 20
         Mr. Brim's bank in order to research the payment.
         Did I read that correctly?
     21
     22
                 You did.
         Α
                 And that was information that you had in
     23
         October, 2005, correct?
     24
14:08:52 25
         A Correct.
```

```
And by that time, you had already sent the
         bank statement to Dell on two separate occasions?
                Correct.
                And so you knew that the bank statement
         alone was not going to get it done, didn't you?
14:09:00
                I didn't. Because they told me that was a
         transactional detail report. I took her at her
         word. I didn't know -- that's what they told me
         it was.
                         THE COURT: Now, is Angela the
14:09:16 10
     11
         lady you spoke to at Redstone?
                         THE WITNESS: No. That's Dell. I
     12
     13
         do not remember her name.
     14
                         THE COURT: And she didn't speak
14:09:24 15
         English?
                         THE WITNESS: She did. She
     16
     17
         said -- I said that Dell needs -- saying they
         need a transactional detail report. She said, I
     18
         don't know what that is. This is a bank
     19
14:09:36 20
         statement. She said, this is it. This is
     21
         everything we can give you. This explains that
     22
         it was paid. So I took her at that.
     23
                         THE COURT: Okay. Well, when you
     24
         talked to Angela at Dell -- did you talk to
14:09:54 25
        somebody named Angela.
```

THE WITNESS: I did at Dell. I told her that's what my bank gave me. So she took that at that time. She took that. THE COURT: Okay. Angela did? THE WITNESS: Angela took that. 14:10:04 BY MR. LANGLEY: Mr. Brim, Redstone told you, though, that if you needed anything other than the bank statement to come back to them, didn't they? 14:10:14 10 To call them, yes. 11 And you never did, did you? Because she told me it was a transactional 12 13 detail report. But you never called Redstone back and 14 said, this document isn't getting it done; I need 14:10:22 15 16 something else? You never did that, did you? 17 I was gone by then. I was traveling. And Mr. Brim, when you disputed this 18 account directly with Midland in late July of 19 14:10:42 20 2008 and at the same time with the consumer reporting agencies, you sent the exact same 21 22 document to Midland, didn't you? 23 I did. I actually called Midland. So 24 Midland at that time -- I called them two days in a row. At that time, I called them to tell them 14:10:58 25

CHERYL K. POWELL, CCR, RPR, FCRR

```
I was sending that. And then I called them the
         next day to verify that they received it. So at
         that time, I would assume that they would have
         told me that they needed something else. When
         they told me that they received it.
14:11:12
                 To make sure that it's clear, the document
         that you sent to Midland in July of 2008 was the
         same thing that you had been sending to Dell?
         Α
                Correct.
14:11:22 10
                And the same is true when you wrote
     11
         letters to Midland and the credit reporting
         agencies in March of 2009, correct?
     12
     13
                Correct. No one ever told me that they
     14
         needed anything else.
                 Well, Dell did, didn't they?
14:11:36 15
         0
                 Which my bank told me that was a
     16
     17
         transactional detail report.
                But Mr. Brim, you just said nobody told
     18
         you you needed anything else. And the truth is,
     19
14:11:48 20
         Mr. Brim, Dell told you they needed something
         else.
     21
     22
                And that's what I -- that's what they told
     23
         me it was.
                         THE COURT: Wait. Are you talking
     24
14:11:56 25
        about the conversation you had with Angela?
```

```
THE WITNESS: No. With -- yes.
         She told me she needed a transactional detail
         report. And I went to the Madison branch bank.
         And she told me it was a transactional detail
14:12:08
         report.
                         THE COURT: So did you call Angela
         back?
                         THE WITNESS: I told her, and I
         faxed that to her. And I -- after that, I was
14:12:14 10
         traveling.
     11
                         THE COURT: Okay.
                         THE WITNESS: So I didn't hear
     12
         back from her.
     13
     14
         BY MR. LANGLEY:
14:12:18 15
                 Mr. Brim, let's look at Plaintiff's
     16
         Exhibit 11 again.
     17
                 In the black book?
                 Yes. In the black book. The first page
     18
     19
         of Defendant's Exhibit 11 -- excuse me.
14:12:46 20
         Plaintiff's Exhibit 11. This is a letter that
         you wrote, isn't it?
     21
     22
                 Correct.
                 And so where it says, please do not
     23
     24
         contact me again by phone or in writing, those
14:12:54 25
        are your words?
```

```
Those are. But I actually called them.
         Α
                You called them?
         0
                 I called Midland.
                 But you had asked Midland not to contact
         0
         you?
14:13:02
                No. I called them to let them know that
         they need to take this off my account and that I
         was sending a bank statement. And at that time,
         they could have told me anything that they
14:13:12 10
         needed.
     11
                 How did you know what to say about not
         contacting you again by phone or in writing? Had
     12
     13
         you talked to anyone at that point?
                 That's common sense. I did not want
     14
14:13:24 15
         them -- I mean, that's a simple request. Please
         don't call me or don't write me.
     16
     17
                 So you expected Midland to heed that?
                Of course. It's a request.
     18
                 Okay. Let's look at Plaintiff's Exhibit
     19
14:13:36 20
         12.
              The first page of Plaintiff's Exhibit 12,
         that's a letter that you wrote to Midland in
     21
     22
         March of 2009, correct?
     23
                Correct.
     24
                 And, again, the middle paragraph, please
14:13:54 25
        do not contact me again in any manner by phone or
```

```
in writing, those are your words, correct?
                 Those are.
         Α
                 And it is a simple request?
         0
                 Uh-huh (indicating yes).
         Α
                 Correct?
14:14:02
         Q
                 It is.
         Α
                 And a request you expected Midland to
         heed?
                 To heed.
         Α
14:14:10 10
                 Mr. Brim, to make sure, you had just
     11
         mentioned that you actually spoke to someone from
         Midland.
     12
                I did.
     13
     14
                 How many times did you speak to a person
         at Midland?
14:14:20 15
                 It was two times around this time when I
     16
     17
         was getting my house. I called them, and I told
         them that I wanted that off of my credit report.
     18
         And I actually called them to tell them that I
     19
14:14:32 20
         was sending in some proof. I might have even
         asked them what did they need. I don't remember
     21
     22
         exact words. And then I sent in a bank statement
     23
         and a dispute letter. And I mean, we had a
     24
         discussion. So, I mean, there wasn't a hello,
14:14:48 25
         bye.
```

 ${\it CHERYL~K.~POWELL},~{\it CCR},~{\it RPR},~{\it FCRR}$ 

```
And that was back in late, 2007, wasn't
         Q
         it?
         Α
                No.
                         THE COURT: He just testified this
         was around this time.
14:14:56
         BY MR. LANGLEY:
                 Oh, I'm sorry. Mr. Brim, I thought
         earlier you had said in response to the first
         letter you got from Midland --
                 Oh, I did. In '07, I did. I spoke with a
14:15:04 10
     11
         lady. And she transferred me to the supervisor.
         And then at that time, I faxed in a bank
     12
     13
         statement.
                Mr. Brim, after your first letter to
     14
         Midland, which was -- excuse me. Your first
14:15:18 15
         dispute letter, which was July 29, 2008, how many
     16
     17
         times did you speak to someone from Midland?
                One time. The first time.
     18
         Α
     19
                And that's until today?
14:15:36 20
         Α
                 Until today that what?
                 I mean, you haven't spoken to anyone from
     21
     22
         Midland at any time since then, have you?
     23
                 In 2009?
         Α
     24
         Q
                Right. That's the one time.
14:15:46 25
         Α
                You mean since then. All right. I
```

```
thought you said since 2008.
                 I may have asked you a bad question. Let
         me start over and see if I can do it again.
                         THE COURT: When is the last time
         you spoke to anyone from Midland?
14:15:56
                         THE WITNESS: In March of '09.
         BY MR. LANGLEY:
                 And that was the only occasion after late
         July of 2008 that you ever actually spoke to
14:16:04 10
         anyone from Midland, correct?
     11
                 Repeat that.
                 March of 2009 was the only time you
     12
         actually spoke to someone from Midland after July
     13
         29, 2008?
     14
14:16:18 15
                Correct.
                 And there were only two pieces of written
     16
     17
         correspondence that you sent to Midland,
         including the one on July 29, 2008, correct?
     18
     19
                 What's that, now?
         Α
14:16:36 20
                         THE COURT: Were there more than
     21
         two letters you sent to Midland?
     22
                         THE WITNESS: No. Disputing --
     23
         just disputing --
     24
                         THE COURT: The correctness of the
14:16:46 25
         report.
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```
THE WITNESS: Yes. That's it.
         BY MR. LANGLEY:
                 So there were two letters, disputing the
         correctness of the report, correct?
                 Correct.
14:16:52
         Α
                 And one phone call?
                 Total?
         Α
                 Total after July of 2008?
         Α
                 Correct.
14:17:10 10
                 So when you said earlier that you
     11
         estimated you had devoted a month to this, you
         weren't referring to a month of dealing with
     12
     13
         Midland, were you?
                 At least a month dealing with -- I mean, I
     14
14:17:24 15
         put in a lot of time getting my credit reports,
     16
         getting research for information to dispute it,
         and write dispute letters, going back to my --
     17
         printing everything off. I mean, I did. I spent
     18
         a lot of time.
     19
14:17:36 20
         0
                 Let's talk about the credit reports that
         you've got. I assume you've produced everything,
     21
         all the credit reports that you had, haven't you?
     22
     23
                 That I produced everything?
     24
                 There's none sitting at your home that you
14:17:48 25
         didn't give to your lawyers?
```

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Oh, credit reports, no.
         Α
                 And the credit reports we have are from
         0
         July, 2008, March of 2009, and February, 2010,
         correct?
                 Maybe. I don't recall getting them
14:17:58
         February of 2010. Maybe so.
                 I'm just trying to make sure that there
         aren't other credit reports you were getting
         during those gaps in time.
14:18:10 10
                 Oh, no.
         Α
     11
                 So there were really two, maybe three
         occasions where you went and got credit reports,
     12
     13
         correct?
               At the time I was trying to get a house?
     14
                Well --
14:18:20 15
         0
                         THE COURT: Are there anymore
     16
     17
         credit reports that you worked on other than the
         ones -- or that you obtained other than the ones
     18
         that are in these notebooks?
     19
14:18:30 20
                         THE WITNESS: No.
     21
                         THE COURT: Okay.
     22
                         MR. LANGLEY: Nothing further at
     23
         this time.
                      Thank you, Mr. Brim.
     24
                         THE WITNESS: Thank you.
14:18:56 25
                         THE COURT: Anything else on
```

```
redirect?
                         MS. CAULEY: Yes, Your Honor.
                         THE COURT: Okay.
                         REDIRECT EXAMINATION
         BY MS. CAULEY:
14:19:02
                 Mr. Brim, if you will pick up that
         deposition that Mr. Langley came up and read to
         you from, please.
                 Okay. I have it.
14:19:10 10
                 And he was on Page 48. And if you'll just
     11
         go two more pages to Page 50.
                Page 50.
     12
         Α
     13
                 At the very top of the page, can you read
         the question that Mr. Tompkins asked you?
     14
                 Is a transactional detail report different
14:19:30 15
         Α
         from the bank statement?
     16
                 And what answer did you give Mr. Tompkins?
     17
                No. Because I went into the branch and
     18
         asked for a transactional detail report. I had
     19
14:19:44 20
         a -- I think it was a copy of this. And she
     21
         said, this is a transactional detail report.
     22
         This is all we can provide. If you need anything
     23
         else, call us.
     24
               And on that same page, did you tell
14:19:56 25
        Mr. Tompkins exactly what branch that you went
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to?
               I did. I told him I went into the Madison
         branch.
                 Mr. Langley asked you about your letters
         to Midland, if you expected Midland to heed your
14:20:14
         request to not call you and not write you, right?
         Do you remember that?
         Α
                 Correct.
                 And in your letter to Midland, Plaintiff's
14:20:28 10
         Exhibit 12, did you ask them in that letter to
         immediately correct your credit report?
     11
                 I did.
     12
     13
                 And did you expect that they would honor
         that request, too?
     14
                 I did.
14:20:40 15
         Α
                         MS. CAULEY: That's all I had.
     16
     17
                          THE COURT: Anything in re-cross?
                          MR. LANGLEY: No, Your Honor.
     18
     19
                          THE COURT: Okay. Thank you,
14:20:46 20
         Mr. Brim. Wait. Do y'all have any questions?
         All right. Let's get the questions first. I
     21
     22
         need to see y'all in chambers.
     23
                          (Bench discussion in chambers
     24
         outside the hearing and presence of jury.)
                          (End of bench discussion.)
14:22:58 25
                        CHERYL K. POWELL, CCR, RPR, FCRR
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(In open court. Jury present.) THE COURT: Okay. This is a question from the juror. Mr. Brim, by your own admission, you stated in writing not to be contacted by phone 14:25:52 nor in writing. How did you expect resolution without any correspondence via phone or written communication? THE WITNESS: Because I called 14:26:04 10 in -- when I called in, they could have at least 11 told me what they needed. 12 THE COURT: Okay. Did you seek 13 any other alternative resolutions? THE WITNESS: Besides the bank 14 14:26:14 15 statement, that's all they told me they needed. 16 Detailed transactional detail report, and that's what I told that's what it was. 17 THE COURT: Okay. In reference to 18 honoring do not call, what else was expected 19 14:26:32 20 from -- I guess by you from the dispute letter? THE WITNESS: To at least let me 21 22 know when I called in what else did they need. Ι 23 mean, because if I speak to you, of course, if someone calls me, I would let them know what I 24 14:26:46 25 want, basically.

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THE COURT: Did Midland Credit Management comply with all of what you --THE WITNESS: Asked for? They didn't. Because it didn't come off my credit report. It did not come off my credit report 14:27:00 even when I filed this suit, so --THE COURT: Okay. What documentation did you have to provide to get your brother's accounts off your credit report? 14:27:12 10 THE WITNESS: I just provided my 11 social security card and my driver's license, because my brother's name is similar to mine. 12 13 And our social security numbers are different by one number. So I provided my social security 14 14:27:28 15 card. THE COURT: Did you receive any 16 17 reasons from the mortgage companies, either verbally or by letter, that stated why you were 18 denied? 19 14:27:36 20 THE WITNESS: I didn't. 21 THE COURT: Why is the address 22 different on the bank statement? 23 THE WITNESS: From the bank that I 24 went in? THE COURT: I don't know. 14:27:44 25

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THE WITNESS: From the bank that I
         went in?
                         THE COURT: No. Let me just see.
                         THE WITNESS: Wynn Drive,
         basically?
14:28:02
                         THE COURT: Did you move?
                         THE WITNESS: No. The Wynn Drive
         I would assume is the headquarters because I
         don't recall going into the Wynn Drive --
14:28:12 10
                         THE COURT: What are you reading
     11
         from right now?
                         THE WITNESS: Well, I'm looking at
     12
         the -- I'm assuming the address of Redstone
     13
         Federal Credit Union.
     14
14:28:22 15
                         THE COURT: Okay.
                         THE WITNESS: Or my address?
     16
     17
                         THE COURT: Are you looking at
         Exhibit 24?
     18
     19
                         THE WITNESS: The one he gave me
14:28:28 20
         last. I'm sorry.
     21
                         THE COURT: Is that what you have
     22
         right there?
     23
                         THE WITNESS: Yes, it is.
     24
                         THE COURT: And it says Wynn
14:28:34 25
         Drive?
```

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THE WITNESS: That's the biggest
         Redstone that I've seen. I'm assuming that's the
         headquarters because that's the biggest Redstone.
         It is.
                         THE COURT:
                                    Hang on just a second.
14:28:42
                         THE WITNESS: This one says Wynn
         Drive, as well.
                         JUROR 16: Can I clarify?
                         THE COURT: Yeah.
                         JUROR 16: In Exhibit 2 on the
14:29:02 10
     11
         plaintiff, his address is listed as 4134 South
         Memorial. But everything else is the
     12
     13
         apartment --
                         THE WITNESS: Golf Road.
     14
                         JUROR 16: -- Golf Road.
14:29:10 15
     16
                         THE WITNESS: Yeah. When I bought
     17
         the computer, that is where I lived. 4134H South
         Memorial Parkway.
     18
                         THE COURT: And then you moved?
     19
14:29:24 20
                         THE WITNESS: And then I moved to
         2225 Golf Road, Unit 106.
     21
     22
                         THE COURT:
                                    All right. Thank you.
     23
                         THE WITNESS: You're welcome.
     24
                         THE COURT: You may have a seat by
14:29:32 25
         your counsel.
```

THE WITNESS: Thank you. (Witness steps down.) THE COURT: Anything else? MR. BENNETT: Judge, and I apologize. The Court recalls that there was a 14:29:46 defense exhibit that was added today. After I had had an opportunity to examine the witness in opening. If the Court would indulge I think, literally, three or four questions solely related 14:30:02 10 to the number in that contract, I would like to 11 recall the defendant's witness. I didn't that document in front of me. They gave it to us 12 13 today. 14 THE COURT: Okay. 14:30:14 15 MR. LANGLEY: Your Honor, they did have that document. It has been in the 16 17 binder since we handed it to them the first day of trial. 18 MR. BENNETT: This morning the 19 14:30:20 20 Court recalls counsel said, I made a mistake. Ιt 21 was actually there and it was provided --22 THE COURT: It was admitted this 23 morning. And you may proceed. 24 MR. BENNETT: Thank you. 14:30:28 25 THE COURT: And you have not even

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rested yet. So you can call any witness you want. MR. BENNETT: Thank you. THE COURT: Who are you calling? MR. BENNETT: I would call the 14:30:36 defendant's representative now. Mr. Edrozo. (Witness sworn.) COURTROOM DEPUTY: Will you state your name? THE WITNESS: Gabriel Edrozo. 14:30:58 10 11 THE COURT: And you're the same Mr. Edrozo that testified earlier in this case? 12 THE WITNESS: I am. 13 THE COURT: All right. 14 14:31:14 15 MR. BENNETT: Your Honor, may I 16 approach the witness to give the defendant this 17 exhibit? THE COURT: Sure. 18 19 MR. BENNETT: And Your Honor, I 14:31:24 20 have Exhibit 21. And I have it opened to Page 32, which is Exhibit D. 21 22 REDIRECT EXAMINATION 23 BY MR. BENNETT: 24 Sir, you're aware that Midland purchased 14:31:40 25 this account as part of a portfolio of

### CHERYL K. POWELL, CCR, RPR, FCRR

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60-some-thousand other accounts from Dell
         Financial?
               Correct.
                 And it was pursuant to this contract you
         provided to us in this litigation, Midland has
14:31:54
         provided?
                 It was part of this contract?
                Yes.
         Q
         Α
                Yes.
14:32:02 10
                And there are various terms in front of
     11
         that contract, but this is the page that outlines
         the actual dollars and cents of the purchase,
     12
     13
         correct?
           I'm not sure. I couldn't speak to that.
     14
         I'm not part of purchasing portfolio.
14:32:12 15
     16
                 I thought you had been in the factoring
     17
         business for -- I'm sorry. 15 years, you said?
     18
         Α
               Correct.
                 And so there is a percentage of the total
     19
14:32:24 20
         outstanding balances, and that percentage is the
     21
         purchase price, correct?
     22
                 I have never been part of purchasing.
     23
                         THE COURT: Well, just look at the
         document and see if you could tell anything from
     24
14:32:32 25
        the document.
```

# BY MR. BENNETT: What is the percentage that was paid -first of all, what is the total value of principal of this portfolio that Midland purchased from Dell? 14:32:46 This document lists the unpaid -- total unpaid balance of \$117,139,081.44. 8 Are you okay at math? I made a joke Q earlier. I'm a finance undergraduate which 14:33:18 10 means --11 Not as good as you. Α I'm horrible at math. 12 Q I'm horrible. 13 What is the percentage of total principal 14 that is paid for that amount? Is it .05? 14:33:28 15 16 32 is what's listed, yes. 17 And the balance on the Midland purchase or the account from Dell related to Mr. Brim when it 18 was sold was \$1,600 or \$1,300? 19 14:33:50 20 A 13. I believe it was 1,354, if I'm not mistaken. 21 22 Can you help me because of my math 23 limitation? I know we have a lot of engineers. Do the math of .0532 from \$1,300? 24 A I could not. 14:34:02 25

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MR. BENNETT: Your Honor, may I
         get my calculator?
                         THE COURT: Yes.
         BY MR. BENNETT:
                 Are you familiar with an IPhone
14:34:30
         calculator?
         Α
                Yes.
                         MR. BENNETT: Your Honor, may I
         approach?
14:34:38 10
                         THE COURT: Yes.
     11
                         MR. BENNETT: Okay.
     12
         BY MR. BENNETT:
                 I have the calculator function. And I'm
     13
     14
         not a witness, so I can't testify. But if you
14:34:44 15
         could do the math on $1,330 for me and tell me
     16
         what .0532 -- the amount Midland paid for this
     17
         account would be.
                 That's not right. One more time. It's
     18
         not calculating right. I'm getting 25,451.
     19
14:35:22 20
         So --
                         THE COURT: Look. This is very
     21
     22
         simple. Okay? You can do it in your head.
     23
                          THE WITNESS: Okay.
     24
                          THE COURT: If we just rounded off
14:35:30 25
        to $1,300, take one percent, how much -- I mean,
                        CHERYL K. POWELL, CCR, RPR, FCRR
```

Federal Official Court Reporter

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one thousandth --
                         THE WITNESS: Thousandth of a
         percent.
                         THE COURT: How much is that?
                         THE WITNESS: 13.
14:35:40
                         THE COURT: No. It's 1.3, isn't
         it?
                         THE WITNESS: Thousandths of
         percent, yes.
                         1.3.
14:35:46 10
                         THE COURT: And you multiply by
     11
         five, how much is that?
                         THE WITNESS: Multiply by five?
     12
                         THE COURT: Is it 6.5?
     13
     14
                         THE WITNESS: Yes.
                         THE COURT: $6.50. Round it off.
14:35:56 15
                         THE WITNESS: 6.50.
     16
     17
                         THE COURT: I am a math major.
                         THE WITNESS: I'm not.
     18
                         MR. LANGLEY: Your Honor, I hate
     19
14:36:02 20
         to object to that, but the percentage is actually
     21
         five percent in the contract.
     22
                         THE COURT: No, it's not. Sorry.
     23
         You're wrong.
     24
         BY MR. BENNETT:
14:36:18 25
         0
                 And did you hear how much my client paid
```

```
for postage to make his disputes?
                I do. I don't recall the number.
         Α
                         MR. BENNETT: I don't have any
         other questions, Judge. Thank you.
                          CROSS-EXAMINATION
14:36:26
         BY MR. LANGLEY:
                Mr. Edrozo, would you please turn to Page
         5 of the document Mr. Bennett showed you?
         Α
                Okay.
                At the bottom of the page, do you see
14:36:50 10
     11
         where it says purchase price as set forth in the
         closing statement attached hereto as Exhibit D?
     12
                I'm sorry. Exhibit --
     13
     14
                Exhibit D. See where it says Exhibit D at
         the bottom of Page 5?
14:37:04 15
                 Okay. I apologize. What exhibit number
     16
     17
         are you looking at?
                The same document Mr. Bennett was just
     18
         asking you.
     19
14:37:16 20
         A
                I'm sorry. I switched pages. I moved to
         Exhibit 5.
     21
     22
                It's Exhibit 21.
     23
                 Okay. Okay. I'm on Page 5.
     24
                Would you please read the parenthetical
14:37:52 25
        after the word, Exhibit D?
```

```
Which amount shall be determined by
         multiplying the total unpaid balance of the
         charge-off accounts as of the file creation date
         being sold by .0532.
                And what's your understanding of .0532?
14:38:06
                         THE COURT: I'm wrong. I admit.
         You're absolutely right. It is five percent.
         And actually -- it's .05, which is five percent.
         So if you multiply that by 1.3, can you get it?
14:38:22 10
         Is it $65?
     11
                         MR. LANGLEY: Actually I haven't
         done that math.
     12
                         THE COURT: Is it $65?
     13
                         THE WITNESS: I'm not good at
     14
14:38:32 15
         math.
     16
                         THE COURT: You're absolutely
     17
         right. I'm wrong. Objection is sustained. But
         it is five percent.
     18
                         MR. BENNETT: Judge, we would
     19
14:38:42 20
         stipulate that they paid $65 for this account.
                         THE COURT: Okay.
     21
     22
                         MR. LANGLEY: Your Honor, we're
     23
         not seeking to reach a stipulation on that.
         Because I don't know the accounts can be isolated
     24
14:38:52 25
         in that way, but I think what is an undisputed
```

```
fact here is that the portfolio was purchased for
         5.3-something percent of the face value.
                         THE COURT: I think you're right.
         Okay. Anything else from this witness?
                         MR. BENNETT: No, Your Honor.
14:39:06
                         THE COURT: Okay.
                         (Witness steps down.)
                         THE COURT: Thank you Mr. Edrozo.
         Wait. Do y'all have any questions? You had some
14:39:16 10
         questions. And if you want to ask any questions
     11
         of Mr. Edrozo, you have a right to do it now.
                         JUROR 16: Any questions, even
     12
     13
         from previous?
                         THE COURT: Yes.
     14
                         JUROR 16: Do you want me to write
14:39:30 15
     16
         it down or ask it?
                         THE COURT: I don't know which
     17
     18
         ones were yours. But if you have any questions,
         you may ask them.
     19
14:41:22 20
                         (Bench discussion in chambers out
         of the presence and hearing of jury.)
     21
     22
                         (End of bench discussion.)
     23
                         (Bench discussion:)
                         THE COURT: Put in that defense
     24
14:43:14 25
         objects to those two questions. I have told her
```

that you all have objected to that. And I've overruled the objection. Because the rule was that everybody agreed to that if there were any objections to any of the questions the Court asked, they could follow up to those questions 14:43:48 that there were objections to. And I have allowed the defendant to follow up with any questions if they have any after I ask the witness that. Okay? (End of bench discussion.) 14:44:02 10 11 (In open court. Jury present.) 12 THE COURT: The first question is 13 are there any other training documents prior to the 2010 printing that Midland employees would 14 14:44:26 15 follow? THE WITNESS: I would have to 16 17 refer to Angelique's testimony. I believe the training documents were within that testimony. 18 THE COURT: What information did 19 14:44:40 20 Midland Credit Management seek from Dell 21 concerning this dispute? 22 THE WITNESS: No information. 23 THE COURT: And why was the 24 greater burden placed on Mr. Brim to produce evidence to close the account? 14:44:56 25

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THE WITNESS: We were unable to contact Mr. Brim based on receiving the cease and desist. THE COURT: Okay. Any follow-up questions? 14:45:14 MR. LANGLEY: No, Your Honor. THE COURT: Okay. Thank you. MR. BENNETT: Your Honor, may I follow up with that one question? 14:45:24 10 THE COURT: Yeah. Everybody can 11 follow up to these particular two questions. 12 FURTHER REDIRECT EXAMINATION 13 BY MR. BENNETT: Not to be repetitive, but you've heard a 14 lot of about transaction logs and the argument 14:45:36 15 16 that my client sent a cease and desist. your answer. You said the problem Midland had 17 was it couldn't do anything more because my 18 client had locked it out from contacting him with 19 14:45:54 20 a cease and desist. That's essentially what you just said, right? 21 22 Right. 23 And you heard your counsel make those same 24 kind of arguments when he was talking with my 14:46:04 25 client?

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Α
                Correct.
                 Let's put this in the context of the real
         world.
                 What would Midland have done differently
         had there not been a cease and desist letter, had
14:46:12
         my client not said, quit your harassing debt
         collector calls or whatever else he was doing?
         What would you have done differently if this
         theoretical obstacle didn't exist?
14:46:30 10
                 We would have had a conversation with him
     11
         our first contact.
                And that conversation would have done
     12
     13
         what?
                Would have --
     14
         Α
14:46:36 15
                 It wouldn't have mentioned transactional
     16
         detail log, right? You've already said there's
         nothing in your policy that permits that
     17
         to matter.
     18
               No. But request the front and back of the
     19
14:46:46 20
         check.
                         THE COURT: For the front and back
     21
     22
         of the check?
     23
                         THE WITNESS: Of the check.
         BY MR. BENNETT:
     24
14:46:48 25
         0
                 But accompanied by a settlement letter
```

```
from Dell; that's what the policy is?
                 Correct.
         Α
                 Not just the front and back of a check?
                 Correct.
         Α
                 So if he had submitted a transactional
14:46:56
         detail log or a bank statement or a front and
         back of a check, they all would have been treated
         exactly the same; that is, they all would have
         been dependent on whether Dell had given
14:47:10 10
         permission to release this account through this
     11
         settlement letter, right?
                 I don't know.
     12
                 Well, there's nothing in any of these
     13
         procedures, 2010, before 2010, after 2010 --
     14
14:47:24 15
         there's nothing in your procedures that would
         have allowed the deletion of this account, based
     16
         on any telephone communications that you might
     17
         have had with my client, unless he had a Dell
     18
         letter, saying it was okay to release this
     19
14:47:36 20
         account, right?
                 Or the copy of the front and back of the
     21
     22
         check along with the letter, correct.
     23
                 With the paid-in-full letter?
         0
     24
         Α
                 Uh-huh (indicating yes).
14:47:44 25
         0
                 Both. Both are necessary conditions,
```

correct; we already went through that in your first testimony. Correct. THE COURT: I thought you said or. So do you have to have both? A settlement letter 14:47:54 and a front and back of a check, paying that amount? THE WITNESS: Yes. THE COURT: Okay. BY MR. BENNETT: 14:48:02 10 11 And a settlement letter and/or a 12 transactional detail log, right? 13 Α Correct. 14 Now, are you aware -- if you could turn to 14:48:14 15 Plaintiff's Exhibit 4. I'm sorry. Not Four. 16 Three. Three. No. Again, my apologizes. 17 Two. Plaintiff's Exhibit 2. Are you aware, as the representative from 18 Midland, that in this litigation, this exhibit 19 14:48:50 20 was provided by Redstone in response to your attorney's subpoena? 21 22 I am now, yes. 23 What's the date that Redstone -- the date 24 of their affidavit for this document they 14:49:10 25 provided?

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```
I believe March 7th, 2011. That's what's
         stamped on it.
                 I'm sorry. If you look at the date of the
         sworn to and subscribed before me. That was June
         18th, 2010, correct? The affidavit, first page,
14:49:22
         Exhibit 2.
                         THE COURT: It's Exhibit 2.
         That's in defendant's.
                         THE WITNESS: Oh. I'm sorry. I
14:49:36 10
         don't have mine.
     11
                         THE COURT: Here. You can have
                That's all right.
     12
         mine.
     13
         BY MR. BENNETT:
                While I'm walking, you are aware, of
     14
         course, your client didn't delete this until mid
14:49:46 15
     16
         September, 2010, correct?
     17
                 I believe it's September 9th, 2010.
                Oh. September 9, 2010. But, again --
     18
                         THE COURT: Let him answer the
     19
14:50:02 20
         question he didn't answer. Can you tell the date
         of the affidavit of Redstone? And that's
     21
     22
         Plaintiff's Exhibit 2. That's the question that
     23
         wasn't answered.
     24
         BY MR. BENNETT:
14:50:18 25
         0
                 The first page of it.
```

```
Yeah. I'm trying to make out the month.
         Looks like 10 of 2010. I'm not sure what month.
                         THE COURT: No. Exhibit 2. This
         is Exhibit 3.
                         THE WITNESS: I'm sorry.
                                                     I ' m
14:50:30
         getting mixed up here.
                         THE COURT: Right here.
                         THE WITNESS: June 18th, 2010?
         BY MR. BENNETT:
14:50:36 10
                 Yeah. Do you have an explanation for why
     11
         after your lawyers had a subpoena response from
         June that it still took three months before it
     12
         was taken out?
     13
                 I don't, no.
     14
14:50:50 15
                 If this subpoena response with the
     16
         affidavit from Redstone had been provided by my
     17
         client but he did not give you a paid letter from
         Dell, it would have been treated exactly as an
     18
         unattested, unauthenticated bank statement,
     19
14:51:16 20
         correct?
                I don't know.
     21
     22
                 Well, if you were following your
     23
         procedures?
     24
                I don't know. There may be other
14:51:24 25
         procedures in other departments I'm not aware of.
```

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We're talking about a legal document.
                         MR. BENNETT: I don't have any
         other questions, Your Honor.
                         THE COURT: Do you have followup?
                         MR. LANGLEY: I do.
14:51:32
                         RECROSS-EXAMINATION
         BY MR. LANGLEY:
                Mr. Edrozo, would you look at Plaintiff's
         Exhibit 3, which is the transactional detail
         report that Mr. Brim provided in August of 2010?
14:51:46 10
     11
         This should be the black binder.
         A Okay. I do not have that black binder up
     12
     13
         here.
     14
                         THE COURT: Here. You can use
14:52:04 15
         mine.
     16
                         THE WITNESS: Thank you very much,
     17
         Judge. Thank you.
     18
         BY MR. LANGLEY:
                Have you seen that document before today?
     19
14:52:14 20
         Α
                Yes.
                Now, if you would, please, Mr. Edrozo,
     21
     22
         look at Defendant's Exhibit 17.
     23
                         THE COURT: Defendant's. It's in
     24
         the white book.
                         THE WITNESS: It's in the white
14:52:30 25
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book? Okay.
         BY MR. LANGLEY:
                 And look at the very last page of
         Defendant's Exhibit 17.
                 Okay.
14:52:52
         Α
                 And you see where it says Box 5?
         Α
                 Yes.
                 If the consumer provided written dispute
         with proof -- that's the situation being
14:53:04 10
         addressed, correct?
     11
                 Uh-huh (indicating yes). Correct.
                 And it says, if proof is valid, update to
     12
     13
         delete, correct?
     14
         Α
                 Correct.
                 Then it says, if unable to determine if
14:53:10 15
     16
         proof is valid, account will be referred to ACQ.
     17
         What is ACQ?
                 That is acquisitions.
     18
                 But if Midland determines that proof is
     19
14:53:24 20
         insufficient, you don't reach that step, do you?
                         THE COURT: What?
     21
     22
         BY MR. LANGLEY:
     23
                 If Midland -- Mr. Edrozo, there are
     24
         essentially three options, aren't there? Proof
14:53:42 25
         is valid, invalid, or they can't tell?
```

```
Correct.
         Α
                 If Midland had received the transactional
         detail report marked as Plaintiff's Exhibit 3,
         would that have been sent to acquisitions?
                 It may have, yes.
14:53:56
                         MR. LANGLEY: Nothing further.
                     FURTHER REDIRECT EXAMINATION
         BY MR. BENNETT:
                 So the three options were valid, invalid,
14:54:08 10
         and can't tell?
     11
                 Correct.
                And if it's can't tell, that's -- then
     12
     13
         Midland would send it to acquisitions, correct?
                 Correct. Depending on who's looking at it
     14
         Α
14:54:20 15
         or what they understand they read.
     16
                 That's not what you said. Because you
         know the next question, correct, which is, why
     17
         didn't you send this the acquisitions. And you
     18
         didn't send it to acquisitions, did you?
     19
14:54:30 20
         Α
                No.
                 So that means that Midland's policy is to
     21
     22
         find a bank statement, per se, invalid.
     23
         can't tell. Invalid, correct? I don't mean to
     24
         pick on you. You're put up as their
14:54:44 25
         representative.
```

```
No. Correct. I don't know who received
         this document. If it was sent to counsel. I
         don't know how --
                         THE COURT: No. Wait. We're not
         talking about what was sent to counsel.
14:54:52
                         THE WITNESS: Okav.
                         THE COURT: We're talking about
         Midland's policy. Mr. Bennett asked you if the
         bank statement, such as the one that was sent by
14:55:00 10
         Mr. Brim to Midland, is deemed invalid, according
     11
         to Midland's training policies.
                         THE WITNESS: Yes, it is.
     12
     13
                         THE COURT: Okay.
     14
                         MR. BENNETT: Thank you.
14:55:08 15
                         MR. LANGLEY: I think there's some
         confusion on this document. I think the witness
     16
         was referring to Plaintiff's Exhibit 3. And
     17
         Mr. Bennett was referring to the bank statement.
     18
                         MR. BENNETT: I was referring to
     19
14:55:18 20
         the procedures that --
     21
                         THE COURT: He was -- I asked you
     22
         about the bank statement.
     23
                         THE WITNESS: And I agree about
     24
         the bank statement.
                         THE COURT: So there is no
14:55:24 25
```

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confusion, I don't think. At least not on my
         part. If there is on yours, you have an
         opportunity to clear it up. Clear it up.
                         MR. LANGLEY: I think it's cleared
         up. Thank you.
14:55:34
                         MR. BENNETT: No other questions.
                         THE COURT: Okay. Thank you.
                         MR. BENNETT: And plaintiff would
         rest, Your Honor.
14:55:38 10
                         THE COURT: Okay. We're going to
     11
         take up a matter outside your presence and
         hearing. So why don't you just enjoy a nice
     12
         break and be back in here in about 20 minutes.
     13
         Don't discuss the case while you're on break.
     14
14:55:52 15
                         (Jury excused.)
     16
                         (In open court. Jury not
     17
         present.)
                         THE COURT: Okay. Plaintiff has
     18
     19
         rested.
14:56:56 20
                         MR. LANGLEY: I believe Jason has
     21
         a motion he's going to make and argue and file
     22
         with the Court.
     23
                         THE COURT: Okay. Do you have a
     24
         written motion or just oral?
                         MR. TOMPKINS: I have a written
14:57:04 25
```

motion.

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THE COURT: Okay. Let me have it.

Let Tammi have it first to mark it filed. And

let me read it before I decide whether I want to

hear argument on it. Okay?

MR. TOMPKINS: Okay.

THE COURT: Thanks. Okay. You can arque.

MR. TOMPKINS: Thank you, Your Honor. Defendant would move for judgment as a matter of law in whole or in part.

And first, I would say that we move for judgment as a matter of law on the willfulness claim in this case. I've cited to Your Honor in the written motion a number of cases stating the type of evidence that are necessary to rise to the level of willfulness. And I do not believe the plaintiff has offered any evidence that Midland's actions in this case rose to a conscious or reckless disregard of rights under the law.

THE COURT: Okay.

MR. TOMPKINS: And ask for a judgment as a matter of law on all claims, both negligence and willfulness, because the plaintiff

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has not presented any evidence of the standard of care for a reasonable investigation, which is, of course, the plaintiff's burden.

In addition, plaintiff has presented insufficient evidence of injury, which is an essential element of the claim under the FCRA.

The only evidence we have heard has been from the plaintiff himself. And in the written motion, we have cited Your Honor a number of cases requiring corroboration. And I have heard no other evidence that Mr. Brim suffered mental or emotional distress.

Finally, Your Honor, we move for a judgment as a matter of law on the basis the plaintiff has not presented sufficient evidence of causation for any injuries.

For the economic -- alleged economic injuries, you have the American Express denial. We heard testimony from Transunion, stating that the Midland account did not affect his credit score. And the American Express denial letter expressly states he was denied when his Transunion score was too low.

THE COURT: No. That's not what the testimony was. The testimony was the

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disputed account was not counted in his credit score. If it had not been disputed, you can infer that his credit score would have been higher, or at least that's an inference you can have from the evidence. MR. TOMPKINS: I'm not sure I follow Your Honor. THE COURT: That's all right. MR. TOMPKINS: Sorry. Ιn addition, Mr. Brim testified that the American Express credit card was going to be obtained for use for business purposes, which means that the FCRA would not govern that credit denial. And we have heard absolutely no evidence other than Mr. Brim's own testimony about other denials. We've seen no denial letters, much less any evidence --THE COURT: I'm sorry. I can't hear you. MR. TOMPKINS: We've seen no denial letters or any other credit applications.

MR. TOMPKINS: We've seen no denial letters or any other credit applications. And Mr. Brim himself was unable to say anyone that told him his credit report, much less the Midland entry on his credit report, caused any of those denials.

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I'll be happy to address any questions you have, Your Honor.

THE COURT: No. I'll let plaintiff respond.

MR. BENNETT: Your Honor, we would respond in order.

Judge, the heading in their first argument, insisting that, I guess, there be a standard of care -- maybe an expert witness -- is not the law.

There is a case which I, by tomorrow morning if the Court needs it, can provide you that you do not need an expert witness to establish standard of care.

The standard in *Johnson V MBNA*, which has been cited without any negative authority since its 2004 adopted in Fourth Circuit, is that it must be reasonable standard.

The Court has already provided its draft of the jury charges that state the reasonableness standard that has been delivered in nearly every furnisher case that it's a -- as in all reasonableness, it is a question of the circumstance and some other factors. But there isn't a standard of care.

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It also suggests, Judge -- and at the end of our evidence we'll make our motion that the -- there is no evidence that any investigation was done at all. So that is, you have two possible violation.

The one violation is that what was done was an inadequate investigation. It didn't go far enough. It wasn't as thorough as it needs to be. But if you imagine a defendant taking a piece of paper and putting it in a trash can and when they received a dispute, that's no investigation. It's not an unreasonable one. It's none at all.

In the case of the Equifax ACDV, there's evidence that Equifax sent an ACDV in August of '08, and there was zero investigation done by Midland. With respect to all the others, there is evidence only that the automated interface, which is not an investigation under -- it's not a bad investigation or mediocre and unreasonable. It is not investigation.

You have two reasons. First, this isn't the law. And second, they don't even get to argue that their investigation was reasonable on the evidence if this was the evidence that

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existed at the end of the trial. There wasn't an investigation done.

The second -- and by the way, Chiang has been cited here. Chiang is a bad case for consumers but not on this issue. Chiang is bad because it holds the principle that you can't use the Fair Credit Reporting Act as a declaratory judgment method when there's a legal dispute about a debt. And if you look at Chiang, this is like the anti-Chiang. This is no legal dispute. There never has been.

There's no question in *Chiang* there is an affirmative defense. But then *Chiang* sites another Second Circuit case in which there was an affirmative defense under the Truth in Lending Act and for fraud. And in both of those instances, the Second Circuit said that's a legal defense; not a factual one. That's different than, say, *Cushman* where the consumer said they never signed the account.

And certainly in this case, this is clearly factual. So it's odd to site the case that says exactly the opposite of what you would suggest. But in this instance, certainly we don't have to prove a standard of care. No Court

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ever. Not one. I don't need to say take the majority path. I can say no Court has done this. And I can say that with some authority as one of the contributing authors in the FCRA manual.

The second argument is plaintiff has not offered any evidence --

THE COURT: You can skip that one.

MR. BENNETT: I would just note,

Judge, we would adopt our omnibus brief, which we detailed at length on this.

Number 3, plaintiff has presented insufficient evidence of injury. No evidence of economic injury. And Judge, again, we would adopt that.

But the standard for economic injury is more than simply proving a specific higher interest rate. And in fact, both in the jury instruction cites as well as the omnibus memorandum, the -- you can establish the loss of credit opportunities a deterrent from applying for credit. And you can prove, as I'll address in the last motion in limine, that by circumstantial evidence -- and this is the reason we asked for the circumstantial evidence instruction. The cites that we offer in our

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omnibus memo -- I don't need to repeat it.

They're all there -- is if our client can show they applied for -- he applied for credit -- and we know that because there are the inquiries that are uncontested -- he did not get the loan. And there's no other explanation that would defeat that my client's Midland account was a substantial factor.

The jury is entitled to make an inference. A common sense inference that this would have been a substantial factor. And that on the -- uniformly, and I cited all the case, that's been addressed.

The other issue is the American Express argument where they're saying, well, they have one witness from Transunion, a litigation liaison, who was subject to a subpoena who made a comment that says, account that is noted disputed doesn't affect a score. That's what they have. In the face of an authenticated letter from American Express that says, this was denied because of your score which was low because -- and the first one is a collection. The second is a recent derogatory.

If you look at the Transunion credit

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report at the time, Exhibit 57, there is no collection but this one. There never was in Transunion's file. There is no recent credit. The two old ones they're talking about was a late credit card payment from 2007. And the student 15:07:36 loan issue was 2005. Both were current. THE COURT: You're talking about the Sam's? MR. BENNETT: Sam's Club was a 15:07:46 10 late credit card payment, Exhibit 57. 11 THE COURT: Well, actually it says 12 in the credit report under pay status paid or 13 paid as agreed even if it is shown as a -- and 14 it's shown with a zero balance. MR. BENNETT: Yes, Your Honor. 15:08:00 15 16 Page 7 of our omnibus, we also cite the Second 17 Circuit decision --18 THE COURT: Okay. Wait. Look. Just address theirs. Don't start reading from 19 15:08:14 20 your brief. That would be helpful. Let me just tell you what else. That deals with the economic 21 22 injury. And B you don't have to address. Mental 23 anguish. Okay. Talk to me about Three. 24 MR. BENNETT: Your Honor, the 15:08:42 25 standard in -- the history under Safeco reduced

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the threshold. The Fourth and the Fifth and the Eleventh had all adopted a conscious disregard knowing standard. The Supreme Court adopted Third Circuit and Ninth Circuits, reckless or knowing. And reckless, you have the case cites.

The jury instruction that we have asked for, which we will argue for, is taken verbatim from those. Recklessness -- and from the Safeco decision -- is a balancing test of whether or not under the circumstances the defendant took an unjustifiable risk of violating the law.

In this instance, they adopted a procedure that for either 95 or 99 percent of the 8,000 disputes they receive a week, they do no investigation whatsoever. They have a procedure which says they will completely default to the original source, and they will not make any corrections themselves ever. That is reckless.

The other factors for recklessness are how long it occurred. And to be candid, having done all these, I have never once had a defendant keep a derogatory item on a credit report nine months into litigation. It's audacious. I've never had that.

The reason the credit bureaus reacted the

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way they did in this case with the early disputes, they sent ACDVs upon filing to the defendant so they could cover themselves. But that itself is reckless. You're sued. June 2010, your attorneys 15:10:14 obtain an attested document that says this bank statement is accurate. And they continue to keep it on for another three months. That's reckless. This is -- I just don't think reckless is 15:10:32 10 available as a matter of summary judgment for a 11 plaintiff because it's such a hard standard. But 12 if any case, this should be it. 13 THE COURT: Okay. Is that the end of it? 14 15:10:44 15 Can you refer me to your exhibit which is 16 the policies and procedures and training manual? 17 What exhibit number is that? MR. LANGLEY: Talking about 18 Midland's? 19 15:10:56 20 THE COURT: Midland's. MR. LANGLEY: I think it's Exhibit 21 22 17. The one I was asking Mr. Edrozo about? 23 That's Exhibit 17. 24 THE COURT: No. I'm not talking 15:11:06 25 about that one. It is a thick one.

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MR. BENNETT: The Module 6. MS. CAULEY: It's 35 in the plaintiff's book. THE COURT: Do you have anything you want to say in response, Mr. Tompkins? 15:11:16 This is your motion. MR. TOMPKINS: Well, I do, Your Honor. I think the fact that Midland did not 15:11:24 10 delete this as soon as the lawsuit was filed 11 actually slants the other way. Because they still had no evidence until that transactional 12 13 detail report was provided to Dell and Dell was able to trace the account and determine that they 14 15:11:40 15 had misapplied Mr. Brim's payment to another 16 customer that this was not an unpaid account. 17 And they did not delete it until they actually found that out. And they weren't going to just 18 delete it because they were sued. I don't think 19 15:11:58 20 that rises to recklessness. 21 THE COURT: Okay. Naomi, I need 22 to see you right quick about something. 23 (Short recess.) 24 THE COURT: Okay. Have a seat. 15:17:04 25 I'm going to deny the motion. I'm also going to

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deny the motion with respect to willful conduct, which I think is a jury question under the facts presented by the plaintiff in this case.

But I did look at Plaintiff's Exhibit 35, which is Midland's procedures for what a consumer must do to validate a dispute claim after the 45 days. And it goes on the burden of proof on the consumer -- it lists what the consumer should do. And under Five over on the left side, it says pay prior to purchase, ask for method, amount, and date of payment, which he furnished, verify payment was made before accounts purchase date. He did that. If payment made after purchase date, process as a direct pay. And I'm not sure what that is.

But I do know that by virtue of Midland limiting this to a check, front and back, plus a settlement letter is something that the plaintiff could never have done in this case because he didn't even have a check.

And the defendant's representative has testified here in open court that he didn't know what a transactional detail report was until five months ago.

I will also say the fact that Midland

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wrote Equifax back after Equifax had corrected its credit report to reflect that it was zero and reported it back, as it was, with a higher balance, I think to at least -- well, I think that's willful, but that's up to the jury to decide. I think there's enough to go to the jury on this issue.

And finally, I know that Mr. Brim did not get or did not look at the complaint he was sued with in small claims court. But he did say it worried him that he knew he had gotten sued because he put the letter together with -- the letter from Gloria Schwartz together with the sheriff's note.

But to that suit, which is in evidence, there is an affidavit by Midland. And it's Plaintiff's Exhibit 17 that says, by virtue of her relationship with Midland, I have personal knowledge of all relevant financial information. All relevant financial information concerning Midland Credit Management, Inc.'s Account Number 8525203719, which includes the following information: That the defendant -- that would be Mr. Brim -- did fail to make payments on the account and that demand has been made for

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defendant to make payment of the balance owing on the account described above more than 30 days prior to the making of this affidavit.

And then it goes on about the lawyers.

And the amount is \$1,381. And she states that under oath in April of 2008, which was after

Mr. Brim had gotten the -- called them -- after he finally received the letter that was sent within the 45-day period and told them that it was incorrect.

And I find there is sufficient evidence for it to go to the jury on the issue of willfulness, and I'm going to overrule motion.

And you need to call your first witness when you take a break. Do you need a ten-minute break?

MR. LANGLEY: We're going to find out if Redstone is here. If so, we'll put them up first.

(Short recess.)

(In open court. Jury present.)

MR. TOMPKINS: Defendant calls

Redstone Federal Credit Union.

THE COURT: Okay.

(Witness sworn.)

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COURTROOM DEPUTY: Will you state
         your first and last name?
                         THE WITNESS: Anthony Cox.
                         COURTROOM DEPUTY: Thank you.
                          DIRECT EXAMINATION
15:31:36
         BY MR. TOMPKINS:
                 Mr. Cox, what is your position at Redstone
         Federal Credit Union?
         Α
                 I am manager of automated operations.
15:31:44 10
                 How long have you held that position?
     11
                 Three-and-a-half years.
     12
                 What was your position prior to manager of
     13
         automated operations?
                 Branch manager of Madison branch.
     14
         Α
15:31:54 15
                 And how long did you hold that position?
     16
                 I held a manager position -- a branch
         manager position for 15 years.
     17
     18
                 How long have you been at Redstone Federal
     19
         Credit Union?
15:32:06 20
         Α
                 25-and-a-half years.
                 Could you tell the jury what the function
     21
         of the automated operations group is?
     22
     23
                 We have several functions. One of the
     24
         main functions is ACH. Automated clearinghouse.
15:32:20 25
         That's where we receive electronic credits and
```

debits for our members' accounts. We also do wires. We receive all the mail. We post mail payments. We also do charge-backs on checks. send out returned checks. We process checks from the branches that come in, and we send those out 15:32:38 for collection. You mentioned the ACH or automated clearinghouse. Can you describe what that is? Α It's an electronic payments that we receive from the Federal Reserve. We go out and 15:32:50 10 11 pick up files that are generated by other 12 financial institutions. And we post those files 13 to our member accounts. 14 Can you explain to me how an ACH transaction is originated? 15:33:08 15 It's originated -- the members originate 16 the ACH transactions by -- they could do a tele 17 18 where they would call the place of business and ask them to generate a transaction on their 19 15:33:26 20 behalf. They could sign up for a direct deposit through a payroll group. And the company they 21 22 work for generates a ACH deposit on their behalf. 23 Basically, that's the way that would work. 24 You said a tele where a member provides. 15:33:48 25 Would that be a phone check?

CHERYL K. POWELL, CCR, RPR, FCRR

Yeah. That would be a phone call. They would call the place of business or a place of business could call them. And ask them if they would like to make a payment by phone. And that payment -- that conversation is recorded. 15:34:02 they give them authorization, give the business authorization to make that transaction on behalf of the member. When an ACH transaction occurs, is there any type of record of that transaction created? 15:34:18 10 11 THE COURT: Is there any type of 12 what? 13 BY MR. TOMPKINS: 14 Any type of record created of that 15:34:26 15 transaction? Yes. There is. We receive the file from 16 17 the Federal Reserve. And that's the record we have to debit or credit the member's account. 18 And also we give a record to the member by 19 15:34:36 20 showing the transaction on their statement. 21 THE COURT: Now, what do you get 22 from Federal Reserve? 23 THE WITNESS: It is a file that we 24 get from them to --15:34:46 25 THE COURT: Over computer?

CHERYL K. POWELL, CCR, RPR, FCRR

THE WITNESS: Yes. Electronic file. THE COURT: What's it say? THE WITNESS: It has the -- has the financial institutions that we're debiting or 15:34:54 we're getting the money from or we're giving money to. And it shows the member's name, their account number, the type of transaction whether it is a debit or credit, how much the transaction 15:35:10 10 is. And it has a trace number on there. And 11 that's how we post that transaction. THE COURT: Would the same 12 transaction be on the bank statement to the 13 14 customer? 15:35:20 15 THE WITNESS: The trace number 16 would not be on the bank statement to the 17 customer, no. THE COURT: But all the other 18 19 information would be? THE WITNESS: It would have the 15:35:26 20 21 name of the company, the date, and the amount. 22 And it would show it was debit or credit. 23 BY MR. TOMPKINS: 24 How long are the records of ACH 15:35:38 25 transactions maintained?

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	1	A We keep those for seven years according to
	2	NACHA rules, which is the National Automated
	3	Clearinghouse Association. That's the governing
	4	body that governs the ACH transactions.
15:35:58	5	Q Does automated operations have a research
	6	function within Redstone?
	7	A Yes, we do.
	8	Q What type of research do you perform?
	9	A When our members go to a branch and
15:36:12	10	request information that the branch doesn't have,
	11	they can call us if it's about an ACH. And we
	12	will research that to verify the debit or credit
	13	and give that information to the employee. And
	14	the employee is free to give that to the member
15:36:30	15	at that point.
	16	Q Do you ever get direct requests from
	17	members?
	18	A No.
	19	Q Are all the employees of the automated
15:36:40	20	operations group located in a single branch
	21	office?
	22	A Yes, they are.
	23	Q Which office is that?
	24	A 220 Wynn Drive, Huntsville, Alabama 35893.
15:36:50	25	Q And does that group in Huntsville support

```
all branches credit union wide?
                Yes.
         Α
                 When a Redstone Federal Credit Union
         member comes to a branch to ask for a record of a
         payment to a merchant, what is that member
15:37:12
         provided with?
                 We give them a copy of the transactional
         detail report -- or actually, we give it to the
         employee, and the employee gives it to the
15:37:26 10
         member. And the transactional detail report
     11
         shows the account number, the trace number, the
         dollar amount, whether it is a debit or credit.
     12
     13
         It shows the originating routing number for that
     14
         originating bank. And it shows the date. And I
         think that's about it.
15:37:46 15
                         THE COURT: Shows the trace
     16
     17
         number?
                         THE WITNESS: Yes, ma'am. On the
     18
         transactional detail report.
     19
15:37:58 20
                         THE COURT: Okay.
     21
         BY MR. TOMPKINS:
     22
                 I want to ask you, Mr. Cox: Do you have a
     23
         black binder in front of you?
     24
         Α
                No, sir.
15:38:18 25
         0
                These are exhibits that have already been
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admitted in this trial. And I want to ask you to
         look at Tab 2.
         Α
                 Okay.
                 Looking at the second page of Tab 2?
         0
         Α
                 Yes, sir.
15:38:48
                 Is that a transactional detail report?
                 Actually maybe I'm not looking at the
         second page. That is a bank statement in here.
                 Does anyone refer to this document as a
15:39:04 10
         transactional detail report at Redstone?
     11
                 No.
         Δ
     12
                         MS. CAULEY: Object, Your Honor.
         That is awfully overbroad. He can't testify for
     13
         all employees of Redstone.
     14
15:39:12 15
                         THE COURT: Sustained. And that
         answer is to be stricken and is stricken from the
     16
         record. And that means that if you cannot erase
     17
     18
         it from your mind, you may not take that
         statement in consideration at the time you
     19
15:39:24 20
         deliberate.
     21
                 How many employees does it have total?
     22
                          THE WITNESS: We have about 800
     23
         employees.
     24
                          THE COURT: Okay.
         BY MR. TOMPKINS:
15:39:34 25
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Mr. Cox, if you look at the fourth entry
         from the bottom, do you see that?
                 Yes, sir.
                 Dell Financial with some letters and
         numbers that are after?
15:39:46
                 Yeah. Payment. And that's the date --
         that's the settlement date of the payment.
                 The 041106?
         Q
                 Yeah. November the 6th, 2004.
         Α
15:40:00 10
                         THE COURT: 2004?
     11
                         THE WITNESS: Yes.
     12
                         THE COURT: Oh, yeah.
     13
         BY MR. TOMPKINS:
                 What does the P-A-Y-M-T mean?
     14
15:40:06 15
                 Payment. Payment.
         Α
     16
                 Does that indicate in any way what type of
     17
         transaction this is?
                 It indicates that it is a payment to Dell
     18
         Financial for 954.12.
     19
15:40:20 20
         Q
                 Does this provide any tracking or tracing
         information for that payment?
     21
     22
                 No.
     23
                 Now, I want to ask you to look at Exhibit
     24
         3 in that same binder. Page 2 of that exhibit.
15:40:50 25
         Do you know what that document is?
```

```
Yes. That's a transactional detail
         Α
         report.
                What information is contained on this
         transactional detail report that's not reflected
         on the bank statement that we just looked at?
15:41:00
                It has the trace number and --
                         THE COURT: Where is that?
                         THE WITNESS: It's right below
         Mr. Brim's name.
                         THE COURT: Start with --
15:41:16 10
     11
                         THE WITNESS: Let me back up.
     12
         That's -- can I go get my glasses? I left them
     13
         over there. Thank you.
     14
                On here, it has transaction code, which is
15:41:56 15
         27, which would be for the -- debiting the
     16
         member's account. And it has --
     17
                         THE COURT: Where do you see that?
                         THE WITNESS: It has the header at
     18
         the top. Explains pretty much what all this is.
     19
15:42:08 20
                         THE COURT: Oh, I see it.
     21
                         THE WITNESS: And the TC is
     22
         transaction code. The debit is the amount.
     23
         it shows a payment. And it shows the date. And
     24
         it has a credit trace number right there, that
         122. And it has Dell Financial. And it has the
15:42:22 25
```

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settlement date.
                         THE COURT: The settlement date,
         the day it was paid? Is that what you call the
         settlement date?
                         THE WITNESS: Yes, ma'am.
15:42:36
         BY MR. TOMPKINS:
                 What is the purpose of the trace number?
                 It's a way for us to verify that the --
         what the financial institution gives us to post
15:42:48 10
         the transaction. And if we need -- if we need
     11
         the -- if we give it to the member, then they can
     12
         give it to the company that they paid. And that
     13
         company can use that trace number to find it if
     14
         they misplaced it or posted it to a wrong
         transaction.
15:43:08 15
     16
                 Mr. Cox, does Redstone have any policies
         concerning its provision of account information
     17
         to persons other than the accountholder?
     18
                Yes, we do.
     19
15:43:20 20
                 What are those policies?
                 We do not give out any information to
     21
     22
         anybody other than the account owner.
     23
                Have those policies been in place for the
     24
         past ten years?
15:43:32 25
         A Yeah.
```

```
Can a third party request a transactional
         detail report?
         Α
                No.
                         THE COURT: Can a customer give
         permission to the bank in writing that you can
15:43:44
         furnish somebody else a transactional detail
         report?
                         THE WITNESS: We wouldn't. We
         would give it to the customer. And the customer
15:43:52 10
         would give it to the third party.
     11
                         THE COURT: All right.
     12
         BY MR. TOMPKINS:
     13
                 Does that include other parties to the
         transactions, for example, a merchant?
15:44:04 15
         Α
                Yes.
                 If a merchant were to call?
     16
     17
                 Yeah. The merchant, we would advise them
         to go through their financial institution to get
     18
         that information.
     19
15:44:12 20
                         THE COURT: What? I'm not
     21
         following you.
     22
                         THE WITNESS: So if --
                         THE COURT: If Dell had called --
     23
                         THE WITNESS: If Dell had called
     24
15:44:20 25
        me, we would tell them to go to their financial
```

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institution, the one that generated the
         transaction.
                         THE COURT: Okay. And they could
         have gotten the same information from them?
                         THE WITNESS: Yes. Yes.
15:44:28
                         THE COURT: Okay. So that would
         show what account it was deposited to.
                         THE WITNESS: And the trace number
         and the amount. Uh-huh (indicating yes).
15:44:36 10
                         THE COURT: Okay.
     11
                         MR. TOMPKINS: That's all I have,
     12
         Your Honor. Thank you, Mr. Cox.
     13
                         THE WITNESS: You're welcome.
                         MS. CAULEY: Your Honor, we have
     14
15:44:44 15
         no questions.
                         THE COURT: Okay. Thank you so
     16
     17
         much.
                Did the jury have any questions? Okay.
     18
                         (Bench discussion in chambers out
     19
15:46:46 20
         of the hearing and presence of the jury.)
                         (End of bench discussion.)
     21
     22
                         (In open court. Jury present.)
     23
                         THE COURT: The first question the
     24
         jury has is: Can a client -- and that would be a
15:48:26 25
        client of yours -- request a detailed report via
```

telephone or other forms of communication, or is it always in person with verification such as ID or account number provided prior to release of a detailed report?

THE WITNESS: It's always in person with verification of ID.

15:48:40

15:48:56 10

15:49:08 15

15:49:18 20

15:49:34 25

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THE COURT: Okay. Would it be reasonable to assume that a branch employee dealing with public inquiries would know what a transactional detail report is and how to request one?

THE WITNESS: Some employees may know, and some would not know. They would eventually figure out what information they would need to give to the member. And they would request that through us. So I guess the answer --

THE COURT: Well, I think the assumption is on the part of the client, is it reasonable to assume -- that's the way I read it -- that a branch employee dealing with public inquiries would know what a transactional detail report is and to request one?

THE WITNESS: It would probably be reasonable for somebody to assume that an

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employee would know what that is. But all
         employees wouldn't know.
                         THE COURT: All right. Thank you.
         You may be excused.
                         THE WITNESS: All right. Thank
15:49:44
         you.
                          (Witness excused.)
                         THE COURT: And your next witness
         is --
15:49:54 10
                         MR. LANGLEY: Your Honor, we call
     11
         Dell Financial Services by video deposition.
     12
                         THE COURT: Okay. Can you get the
     13
         video to work?
                         MR. LANGLEY: I believe we worked
     14
15:50:02 15
         that out earlier today. But --
     16
                         MR. BENNETT: And Your Honor,
     17
         there were three of the speculation objections on
         the record.
     18
     19
                         THE COURT: Hang on just a second.
15:50:28 20
         Let me see them.
     21
                         MR. BENNETT: We don't mind the
     22
         jury hearing.
     23
                         THE COURT: No.
                                           I just want to
     24
         see them.
15:50:36 25
                         MR. LANGLEY: Do you want us to
```

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approach?
                         THE COURT: If you'll give me the
         written copy of the deposition and give me page
         and line, I can read it and rule without going in
         chambers.
15:50:42
                         MR. BENNETT: Your Honor, I have
         bracketed and put tabs on the three.
                         THE COURT: Okay.
                         MR. LANGLEY: Your Honor, we have
15:50:58 10
         no objection -- we don't contest the objection
     11
         with respect to Page 31.
     12
                         THE COURT: So you're going to
     13
         take that out?
     14
                         MR. LANGLEY: Yes, Your Honor.
                                     Okay. That is Page
15:51:06 15
                         THE COURT:
         31, Lines 8 through 14?
     16
     17
                         MR. LANGLEY: Yes. And Your
         Honor, we will stipulate to remove Page 36, Line
     18
         24 through Page 37, Line 25. And the last one,
     19
15:51:40 20
         we oppose their objection.
     21
                         MR. BENNETT: On Page 42, Lines 20
     22
         through 24.
     23
                         THE COURT: Okay.
     24
                         MR. BENNETT: And we can argue if
15:51:56 25
        the Court --
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THE COURT: Hang on just a second.
         Let me just read it.
                         MR. BENNETT: Your Honor --
                         THE COURT: Wait. Would you
         please just let me read it in context?
15:52:18
                         MR. BENNETT: I'm sorry.
                         THE COURT: I'm going to sustain
         the objection to that part.
                         MR. BENNETT: Thank you, Judge.
                Now, logistically, the defendant -- we
15:52:38 10
     11
         have a sophisticated jury. We would be -- the
     12
         plaintiff would accept Your Honor instructing the
         jury of those objections because of the technical
     13
         difficulty the defendant would have at redacting
     14
15:52:54 15
         them. So they will hear the objected
     16
         testimony --
     17
                         THE COURT: I'll instruct --
                         MR. LANGLEY: Your Honor, may we
     18
         be heard very briefly on the record on this
     19
15:53:06 20
         issue?
                         THE COURT: No. That's it.
     21
                                                        I ' m
     22
         sorry. I've ruled.
     23
                 Okay. This is a deposition taken of a
     24
         Dell representative while the witness was under
15:53:14 25
         oath. And you should consider her testimony as
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if she were here in person, testifying in open
         court in front of you. And I think the only
         objection that plaintiff has is the objection
         I've just sustained.
                          MR. BENNETT: Well, they all are
15:53:26
         still objections --
                          THE COURT: But you are
         withdrawing them?
                         MR. BENNETT: No. We still
15:53:34 10
         insist, but it's difficult for the defendant to
     11
         remove it or redact it. We would ask if, at each
         of those three points, the Court could instruct
     12
     13
         the jury that you have sustained --
                          THE COURT: You're
     14
15:53:42 15
         misunderstanding me.
     16
                          MR. BENNETT: Sorry.
     17
                          THE COURT: Those three
         objections, two of which the defendant has
     18
         stipulated are appropriate, and the third one are
     19
15:53:50 20
         the only objections you have?
                         MR. BENNETT: Yes, Your Honor.
     21
     22
         The only ones.
     23
                          THE COURT: Okay.
     24
                          (Videotape played.)
16:28:36 25
                          MR. BENNETT: Your Honor --
                        CHERYL K. POWELL, CCR, RPR, FCRR
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THE COURT: Okay. I sustained the objection to the question as to based on the records that you have reviewed, why would

Mr. Brim have asked about auto pay if he was contending the payment had already been made in full. There was an objection to that question.

I sustained it. But she also said, I don't know. Disregard both the question and the answer.

(Videotape played.)

THE COURT: The next --

MR. BENNETT: We don't mind if the jury hears it if the judge instructs.

THE COURT: We're just talking about a couple of lines, right? From Line 20 to Line 24?

MR. BENNETT: Yes, Your Honor.

That's the question. But then the answer would
go on to Page 43, Line 9.

THE COURT: Okay. There is a question that is about to be -- rather than stopping and running and deleting, there's a question that is being asked by -- questions being asked by the defendant, dealing with what Midland -- I mean, what Dell Financial Services' response would have been if Midland had contacted

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16:28:54

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16:44:12 10

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16:44:28 15

16 17

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16:44:34 20

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16:44:52 25

them in '08 and '09 and '10. And I have -- and there's an answer. And they have objected to that. And I have sustained that objection. That means that that series of questions -- and it goes all the way up to Ms. Cauley's 16:45:10 cross-examination. You are to eliminate from your brain when you go into the jury room to deliberate in this case. It is stricken. And that means even if you cannot erase it, you cannot take it in 16:45:26 10 11 consideration at the time you go to deliberate. 12 (Videotape played.) 13 MR. BENNETT: Your Honor, the rest of the next couple of pages are, I don't think, 14 17:02:46 15 particularly informative one way or the other. They could advance it. 16 17 THE COURT: Hang on just a second. MR. BENNETT: I believe, Counsel, 18 for substantive stuff again is after Mr. Langley 19 17:02:58 20 asks questions on Page 60. 21 THE COURT: Okay. 22

MR. BENNETT: Maybe 60, Line 9.

If you want to skip those couple of pages. will save us five, ten minutes, at least.

THE COURT: Okav.

23

24

17:03:08 25

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MR. BENNETT: Or start with Mr. Langley's questioning on Page 59, Line 21. The first thing he gets an answer to is Page 60, Line 9. JUROR 24: We really need to use 17:04:34 the restroom. THE COURT: Okay. Just take a 8 restroom break. (Short recess.) 17:10:56 10 (In open court. Jury present.) 11 THE COURT: Let the record show 12 the jurors are back in the courtroom, and 13 everybody is here who is supposed to be here. 14 Did you find the place, Mr. Tompkins? MR. TOMPKINS: Yes, Your Honor. 17:11:08 15 16 THE COURT: Thank you so much for 17 your effort. (Videotape played.) 18 THE COURT: Ladies and gentlemen 19 17:14:02 20 of the jury, we're going to recess for the night. I hope you'll have a good night. It's supposed 21 22 to be stormy tonight. So just be careful. 23 not supposed to start until late, I think. 24 anyway, be careful and observe the instructions 17:14:16 25 I've given you about not discussing the case.

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And please be back at 9:00 o'clock in the morning. I think we only have one witness left. So the case will go to you probably around noon tomorrow. Okay?

I need the lawyers to stay.

(Jury excused.)

(In open court. Jury not

present.)

17:14:28

17:15:38 10

17:15:56 15

17:16:10 20

17:16:26 25

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THE COURT: Okay. I need to put something else on the record about this Exhibit A, which were the questions I attributed to Juror Bess, and then the juror that actually owned up to the questions was Juror Hines. And --

MR. LANGLEY: Do you need me to speak up?

THE COURT: No. It was mentioned by the defendant when they moved to strike him and excuse him about they didn't know about his math background. But that even -- and I overruled that objection.

Mr. Hines' background that he noted -- let us all know about when he was answering the question is that he is a retired electronic engineer. He has a BS degree, he has a master's degree, and he is working on his Ph.D.

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MR. LANGLEY: Your Honor, we didn't object on the grounds that we didn't know he had a math background. But he was the one that raised his hand and asked about factoring in the mathematic context. That wasn't the basis of 17:16:34 our objection. THE COURT: Okay. Well, he didn't write it. So it's moot. It's Mr. Hines that wrote it. Anyway, since that has been cleared 17:16:46 10 up, I just want to put that on the record. 11 And let's go talk about the -- have the 12 jury charge conference now. Because I need Tammi 13 to make the copies in the morning before we start. Just come in the office. 14 17:17:10 15 (The Proceedings were recessed at 16 approximately 5:17 p.m. on February 24, 2011.) 17 18 19 20 21 22 23 24 25

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CERTIFICATE

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I, the undersigned, hereby certify that the foregoing pages contain a true and correct transcript of the aforementioned proceedings as is hereinabove set out, as the same was taken down by me in stenotype and later transcribed utilizing computer-aided transcription.

This is the 16th day of March of 2011.

Change K Powell

Cheryl Renae King Powell, CCR, RPR, FCRR
Federal Certified Realtime Reporter

CHERYL K. POWELL, CCR, RPR, FCRR